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THE DEMOCRATIC DOGMA AND THE FUTURE OF POLITICAL SCIENCE*

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Everyone has heard the gibe that the specialist is a man who knows more and more about less and less, while a sociologist is one who knows less and less about more and more. Another quip has it that while psychology is all data and no conclusions, sociology is all conclusions and no data. Political science itself has not escaped a certain amount of cheap disparagement from those who know little or nothing about it. Thus a political scientist has been described as one who among politicians is reckoned a scientist, and among scientists is reckoned a politician; or, indeed, as one who is called a political scientist because he is neither—an obvious paraphrase of Voltaire's famous sarcasm regarding the Holy Roman Empire. At any rate, the time has come when a certain group of political scientists have wearied of such gibes, to say nothing of that condescension which they think they detect in the attitude of laboratory scientists toward them; and they have registered a vow to convert political science from a "normative" or "telic" science, as it has been variously called, into a natural science, into a science which will hereafter be printed in lower case instead of in upper; and will, moreover (the height of ambition of all true sciences) be able to predict the future

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just as astronomy, physics, and chemistry are able to do—not to mention astrology, alchemy, and palmistry. Nor is this newly conceived ambition the product merely of discontent; it is rather more, perhaps, response to the beckoning of opportunity—the opportunity spelled by the rise of the behavioristic psychology. For if human behavior in general can be made the subject of scientific measurement leading to prediction, why cannot that particular portion of it which has political consequences? At this point another consideration enters.

The father of political science based his work on the doctrine of the inequality of man and a defense of slavery. But certainly until recent years the connection of modern political science with Aristotle has been highly discontinuous, not to say casual. To the *Politics* are traceable the classification of governments into those of the one, the few, and the many; the doctrine of three intrinsically distinct functions of government; and the earliest formulation of the principle of a government of laws and not of men. But even for these ideas the indebtedness of American writers has usually been indirect, while on the other hand in England, where the *Politics* is still read in university courses, the term political science is an exotic; nor is there a single English periodical which bears this label. The fact of the matter is that modern political science—the normative, telic science—is a belated offspring of eighteenth-century rationalism, and has taken all its ideals from that source. It sprang from the same matrix as the democratic dogma, and it has heretofore fought in the same ranks and for the same causes as its older relative. So the question arises, what would the consequences be if political science, renouncing its rôle of crusader, became a mere laboratory science; and especially if it did so in alliance with behaviorism, which repudiates, if not with scorn and contumely, at any rate with scientific finality, the most fundamental assumption of the democratic dogma, the assumption that man is primarily a rational creature, and that his acts are governed by rational considerations?

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I. THE INTELLECTUALIST FALLACY

It becomes pertinent at this point to devote a word or two to the opening phrase in the title of this paper. "The democratic dogma" is, of course, the doctrine that the people should rule. But why should they? Not because they wield the physical forces of society, which in this modern machine-gun era they rarely do, but because they know their own good, and act upon their knowledge, and so know the most widely spread public good, which they will endeavor to bring to pass. The dogma involves, it will be noted, not a few questionable assumptions, but the only one of interest to us in this connection is the one already mentioned, that men act on reason.[1]

In his *Human Nature and Politics* Professor Graham Wallas has collected many interesting illustrations of what he terms "the intellectualist fallacy" as it has found utterance in the field of political thought. Contradicting the utilitarian idea that it was possible to produce a science of government from the principles of human nature, Macaulay, writing in 1829, himself accepted the major premise of Utilitarianism. "What proposition," said he, "is there respecting human nature which is absolutely and universally true? We know of only one, and that is not only true but identical—that man always acts from self interest . . . . . When we see the actions of a man we know with certainty what he thinks his interest to be."[2] Burke's oft-quoted definition of "party" was from the same mint: "A body of men united for promoting by their just endeavors the national interest upon some particular principle in which they are all agreed."[3] However applicable this definition may be to new parties, third parties, and revolutionary parties, few parties that have once sampled the sweets of office would survive its acid test. Yet another aspect of the intellectualist outlook is revealed by the invocation in the

[1] Thus, I do not consider it necessary for my purpose to deal with the contention of the Groupist philosophers that men always seek the interest of some group less than the state.

[2] Quoted in Graham Wallas, *Human Nature in Politics*, p. 22.

[3] *Ibid.*, p. 83.

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Declaration of Independence of certain "self-evident truths," and its concomitant solicitation of "the decent opinion of mankind." For in these words we perceive not only the Newtonian background of eighteenth-century political rationalism, but its assumption of the uniformity of human thought and the universal compulsion thereupon of the principles of correct political reasoning.

And the social product—or, speaking more accurately, the algebraic sum—of individual reasons was, in the rationalist cosmology, that which is termed "public opinion." It is true that earlier (as also later), public opinion was regarded as connoting anything but intellectual processes; but in the period of which we are now speaking, when anyone used this term he was at once understood to mean the highest fruition of human mentality when its attention was directed to public questions, and to convey that the prompt enactment of its mandates into law was the be-all and end-all of political association, as well as the conclusive test of excellence in government.

Again we draw an illustration from Professor Wallas's pages. It is culled from the speech of James A. Garfield before the convention which nominated him for the presidency. Garfield was evidently somewhat troubled by certain things he had witnessed in the convention, things that did not fit very well into his rationalistic presuppositions; so we find him comforting himself and his auditors with the reflection that the final decision lay with a body of men whose spirit of reasonableness and rectitude of intention were not open to impeachment. "I have seen," the passage runs, "the sea lashed into fury and dashed into spray, and its grandeur moves the soul of the dullest man. But I remember that it is not the billows but the calm of the sea from which all heights and depths are measured . . . . . Not here in this brilliant circle where fifteen thousand men and women are gathered is the destiny of the Republic to be decreed for the next four years . . . . but by four millions of Republican firesides where [are] thoughtful voters with wives and children about them, with the calm thoughts inspired by love of home and country, the history of

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the past, the hopes of the future, and the knowledge of the great men who have adorned and blessed our nation in the days gone by. There God prepares the verdict that shall determine the wisdom of our work to-night."[4]

To be sure, there are touches here—lapses into sentimentalism—which an eighteenth-century rationalist could only deplore. Would not wife and child be apt to disturb the cogged premises of intellectualist thought? What, moreover of the implication that only Republicans have "calm thoughts"—and this before the days of "keeping cool with Coolidge?" And, worst of all, what of the tactics of giving Deity a finger in the pie? That would have spoiled the picture entirely for an eighteenth-century Deist. But at least we are assured that the final result will be all right. It will be *as if* "calm thoughts" alone determined it.

The *als ob* way out of difficulties is also the one taken by Bryce in his *American Commonwealth*. "In the ideal democracy," he wrote, "every citizen is intelligent, patriotic, disinterested, his sole wish is to discover the right side in each contested issue, and to fix upon the best man among competing candidates. His common sense, aided by a knowledge of the situation of his country, enables him to judge wisely between arguments submitted to him, while his own zeal is sufficient to carry him to the polling booth."[5] By "ideal democracy" Bryce evidently meant a realizable ideal, considering the facts of human nature. Certainly, as Graham Wallas comments, "no doctor would begin a medical treatise by saying 'the ideal man requires no food and is impervious to the action of bacteria, but this ideal is far removed from the actualities of any known population.' No modern treatise on pedagogy begins with the statement that 'the ideal boy knows things without being taught them, and his sole wish is the advancement of science, but no boys at all like this have ever existed.' "[6] No doubt, as Bryce himself owned, the American Commonwealth, regarded as the

[4] Graham Wallas, *Human Nature in Politics*, p. 111.
[5] *Ibid.*, p. 126.
[6] *Ibid.*, p. 127.

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ideal democracy, had its limitations. "It is rather sentiment than thought," he wrote, "that the mass can contribute," and in the political beliefs of nineteen out of twenty there is "little solidity and substance."[7] And yet, for all that, the democratic régime in the United States was a régime of reason.

A subsequent chapter is entitled "How Public Opinion Rules in America;"[8] and still later the statement is added: "There is no class or set of men whose special function it is to form and lead opinion. The politicians certainly do not; public opinion leads them."[9] Then, quoting Lincoln: "With public sentiment on its side, everything succeeds; with public sentiment against it, nothing succeeds." Thereupon, on his own account, Bryce proceeds: "Public opinion is a sort of atmosphere, fresh, keen, and full of sunlight, like that of the American cities, and this sunlight kills many of those noxious germs which are hatched where politicians congregate;" and, "It is the habit of breathing as well as helping to form public opinion that cultivates, develops, trains, the average American."[10] The final sentences of Bryce's elaborate analysis read: "Public opinion grows more temperate, more mellow, and assuredly more tolerant. Its very strength disposes it to bear with opposition or remonstrance. It respects itself too much to wish to silence any voice."[11]

This was written nearly fifty years before the campaign of 1928! In his last work, incorporating his final assessment of the world's great democracies, Bryce still recorded a favorable view of the quality of public opinion in America as compared with other democracies; but his complimentary verdict was seriously qualified by his discovery of the growing indifference of the masses the world over toward political questions. "The lapse of years," he says, "has given us a fuller knowledge. It is time to face facts and to be done with fancies . . . . . The proportion of citizens who take a lively and constant interest in

[7] *American Commonwealth* (1910), vol. 2, p. 254.
[8] *Ibid.*, chap. 78
[9] *Ibid.*, p. 308.
[10] *Ibid.*, p. 367.
[11] *Ibid.*, p. 376.

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politics is so small, and likely to remain so small, that the direction of affairs inevitably passes into the hands of a few."[12] In the end, he challenged Aristotle's classification of governments. There is, he found, only one kind of government, whatever the external forms, "the government of the few."

Two other expositions of public opinion from the rationalist point of view demand passing notice. Of Ostrogorski's *Democracy and the Organization of Political Parties*, which appeared in 1902 and represented the results of fifteen years' observation of the party system at work in America and England, I quote Professor Wallas's pertinent criticism: "The instances given in the book might have been used as the basis of a fairly full account of those facts in the human type which are of importance to the politician." Instead, they are "regretfully contrasted with 'free reason', 'the general idea of liberty,' 'the sentiments which inspired the men of 1848'; and the book ends with a sketch of a proposed constitution in which the voters are to be required to vote for candidates known to them through declarations of policy 'from which all mention of party is rigorously excluded.' One seems to be reading a series of conscientious observations of the Copernican heavens by a loyal but saddened believer in the Ptolemaic astronomy."[13]

The other work referred to is President Lowell's *Public Opinion and Popular Government*. The earlier pages of the book waft one back to the closing days of the eighteenth century as on a Whittall carpet endowed with magic. Public opinion must be both "public" and "opinion"; and while opinion "need not be entirely rational," it does denote two things: first, a process of reasoning, and secondly, knowledge of facts to furnish the basis of the reasoning. The writer then proceeds to show, and quite convincingly, how little likely these conditions are to be realized when the electorate at large attempts to legislate.

II. THE LESSON OF POPULAR INDIFFERENCE

As may have been discovered from what has already been said, modern attack on the democratic dogma has proceeded from a two-fold basis: first, from the basis afforded by the

[12] *Modern Democracies*, vol. 2, p. 549.
[13] *Op. cit.*, pp. 124–125.

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phenomenon noticed by Bryce of the growing indifference of the voter; secondly, from the basis uncovered especially by Wallas in his challenge of the notion that the voter, when he does condescend to show an interest, will act on rational considerations. As to the former phenomenon, American experience is especially illuminating, and so may be briefly recounted at this point.

The progress of the democratic dogma in the Unites States was marked by a double process: first, the extension of the franchise, a development apparently brought to an end by the Nineteenth Amendment, though not certainly, since children still remain without votes, to say nothing of the parlor furniture; secondly, by the constant increase of the burden of the voter. Perhaps it was thought that as the electorate was enlarged it became proportionately capable of bearing a heavier load—an erroneous assumption, since to each voter the burden is cumulative. The first thing that happened along this line was the conversion in the second quarter of the last century of nearly all local and state offices into elective offices, with the result that it became impossible for the voter to inform himself, even if he were disposed to make the effort, as to the fitness of more than a small fraction of the candidates for office. What, however, the voter was unable or unwilling to do for himself, the professional politician was only too glad to do for him. The final outcome is stated graphically by Professor Kales in his witty brochure entitled *Unpopular Government in the United States*: "The elector by being required to vote too much has been compelled to surrender to a large extent his right to vote at all . . . . . Formerly people were disfranchised when they were given no opportunity to vote. Today they are disfranchised by being required to vote too much. Formerly the legal rulers of the disfranchised mass were selected for them by the few without equivocation. Today our legal rulers are selected for us by the few through the subterfuge of the mass casting ballots according to the direction of the few." For aristocracy has been substituted politocracy.[14]

[14] Pp. 24–25.

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The only criticism that can be made of this statement of the situation is that it impliedly exaggerates the voter's interest. That political indifference in the United States is by no means due to the complexity of the task the voter is confronted with is shown by the fact that it operates most conspicuously in the presidential elections. In the election of 1924 less than fifty per cent of the eligible vote was cast, and in that of 1928 less than fifty-five per cent. No,—American political indifference is due chiefly to circumstances as to which agitation for the "short ballot" is little apposite. It arises from the average American's sense of well-being and his consequent confidence in his governors, from the general homogeneousness of political sentiment as to fundamentals among the American population—at least in a period of prosperity—and, above all, from the fact that, with the incoming of radio, the movie, and cheap motor transportation, politics has largely lost its capacity to entertain and amuse.

This, however, political science, still blinded by its inherited intellectualism, has failed to appreciate; and while on the one hand it was launching campaigns for fewer elective offices, on the other hand it was lending aid and comfort to the movement for the initiative, referendum, and recall. "The cure for democracy is more democracy," was the sage shibboleth of the supporters of the I. and R., a teaching which has received justification in certain instances, e.g., Italy and Spain, where, applied as a vaccine, the democratic virus has at last produced an apparently complete immunity. In the United States, on the other hand, democracy had long since become the normal state of health of the body politic; so what possible pertinence could the therapeutics of prophylaxis have in such a case? Besides, *similia similibus curantur* never did mean—until the excellent Hahnemann happened to run across this tag-end of Latin somewhere—that an ailment was to be cured by taking more of it, but only that when a substantially similar disease to the one just cured is met with, like remedies should be employed. What a torrent of error from so slight a source; and how the *corpus humane* and the *corpus politicum* have suffered! In the ideal

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democracy the study of the classics will not be neglected! Meantime we may note for the consolation of the over-worked voter (actually a sybaritic loafer) Bernard Shaw's conclusion that "government presents only one problem, the discovery of a trustworthy anthropometric measure." Give the intelligence-tester time, and he will relieve the voter of both the ballot's burden and the political parasite.

III. THE LESSON OF MASS SUGGESTIBILITY

The indifference of the masses toward their political rights and duties—an indifference which paradoxically increases with the importance of governmental intervention in daily life—forms a crucial test of the assumptions of eighteenth-century political thought. But the question remains, What is the quality of popular political response when it is forthcoming? What aptitudes does it reveal on the part of the political animal? In general, the answers to this question may be said to boil down to two: first, the political animal has a pronounced liking for non-rational inference, that is to say, for conclusions not drawn from premises that are statable in terms of public interest, or even, for that matter, of his own interest; secondly, he is a highly suggestible creature, with the result that it becomes a very simple matter for those who know the game, as the professional politician, advertising expert, and paid propagandist very well do, to plant in his mind (the word "mind" is used subject to withdrawal later on in deference to Dr. Watson) just those premises, prejudices, "stereotypes," which can be counted on to produce in such a mind the kind of inference that said politician, advertising expert, or propagandist wishes to have produced.

As every student of political history is aware, there never was a time when the *credo* of democracy escaped challenge. There were reactionaries even in early days. One of these was Alexander Hamilton, who on one occasion asserted that while man is no doubt a reasoning being he is not a reasonable one; and on another refuted the slogan "*vox populi vox dei*" with the blunt assertion: "Your people, sir, is a great beast." A con-

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temporary reactionary, equally distinguished, was Edmund Burke, although he is also quotable, as we have seen, on the other side of the question. "Politics," said Burke, "ought to be adjusted not to human reasoning, but to human nature; of which the reason is but a part, and by no means the greatest part."[15] The anti-intellectualist criticism has never been put more completely or more compactly. The French Revolution definitely fixed Burke's attitude.

Nowadays, anti-intellectualism has become a philosophy of life, and the disparagement of reason—as, for example, in the case of Bergson—a species of religion. This could never have come about solely on the warrant of a few political pessimists, however eminent, nor even from the support lent by the observed facts of human behavior. Anti-rationalism has won out in the nineteenth and twentieth centuries for the same reason that rationalism triumphed in the two preceding ones, i.e., because of the sustenance it has drawn from the intellectual atmosphere of the period. For anti-intellectualism is itself highly intellectual. Political rationalism was a growth of the period when the conception of the Newtonian physics dominated human thought, a science which was preponderantly mathematical and deductive. The thesis of the essential irrationality of the political animal has been, I will not say supported, it has been rendered inevitable, by the Darwinian biology. This is so for several reasons. The Darwinian doctrine of evolution by the slow accumulation of slight differences is necessarily hostile to any suggestion of sudden or brilliant change due to the intervention of mind, whether human or divine. "You cannot add a cubit to your stature by taking thought" is its motto; and this is just what eighteenth-century political thought asserted could be done. There was from the first an irrepressible conflict between the two points of view. Again, the Darwinian biology has stimulated the study of institutional origins. It is the mother of the modern science of anthropology, and the confirmation which anthropology lends to the assumption of man's rationality is, to say the least, not impressive. The study of taboo, totemism, primitive marriage

[15] "Present State of the Nation." *Works*, vol. 1, p. 280.

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customs, and the like, does show, it is true, a sort of innate tendency on the part of the human mind toward rationalization—but such rationalization! Fear, superstition, unalloyed silliness, are its ingredients. Finally, the Darwinian biology is also the mother of the modern science of psychology, which in the effort to justify its parentage has been driven increasingly to the necessity of corralling its subject-matter in the laboratory—in short, of reducing mind to matter.

But even before there was psychology there were psychologists, and especially political psychologists. One of the very greatest of these was Walter Bagehot, whose *English Constitution*, in its penetrating analysis of the political mentality of the English masses of that period (1860), anticipates most that has since been merely put into scientific jargon regarding non-rational inference and mass suggestibility. Sparks thrown off from Bagehot's wheel, both in this work and in his *Physics and Politics*, were fanned into a brisk flame by the Frenchman, Tarde, in his *Lois de l'Imitation*, and the latter's compatriot, Le Bon, in his famous *Psychologie des Foules* and his later *Psychologie Politique*. Tarde argued, in effect, that nothing creative comes from the people, that popular movements, fashions, vogues, all take their origin with the conspicuous few, the brilliant, the successful. Mass thinking, in short, is essentially parasitic and imitative. Tarde was thinking of the dispersed mass; Le Bon's studies were, to begin with, of the crowd, the public meeting, the mob. Its outstanding trait is its gullibility, its mysticism, its irresponsibility, its capacity for auto-intoxication by the exuberance of its own violent sentimentalism, generous at times as this may be. Instead of resulting in intellectual clarification, the assemblage of large numbers for political purposes is inevitably productive of obfuscation; as by an inherent gravitation, the mood of such aggregations strikes for the lowest common denominator of human behavior in the emotions. Nor is this true solely of crowds gathered in a single spot at a definite time; long sustained efforts to maintain mass alignments, like a war or a revolution (or a political campaign), produce all the symptoms of crowd psychology—its irrationality, its alarmism, its instability.

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Politics Le Bon sums up as "a struggle of phantoms," and leadership as "genius in utilizing these."[16]

It was, however, in 1909, in Graham Wallas's *Human Nature in Politics*, that the cornerstone of "the new political science was laid." In this work, based upon the personal political experiences and first-hand observations of its author, interpreted in the light of wide reading, the intellectualist preconceptions of the nineteenth-century democracy are squarely challenged for the first time; and the promise is held out that, emulating political economy, which had long since cast aside "the economic man" of the "classical school," and so proceeding with a truer view of human nature, political science could hope to avail itself of quantitative methods and become a real science.[17] Both the professional and personal vanity of the political scientist were thereby ministered to at one stroke. He foresaw a term to the condescension of honest-to-goodness laboratory scientists, and he foresaw himself elevated as never before to the post of professional adviser of the masses in matters political. Instead of being merely the heir of all the ages along with the rest of Western mankind, he would be trustee of this vast estate and the guardian of a populace destined to an indefinite nonage.

Wallas's approach to his problem is furnished by the Darwinian notion of struggle for existence, and by the old associationist psychology of the British school. By the struggle for existence human nature has been grooved with certain instincts, which are immensely more important in determining conduct than rational considerations; and the art of the politician consists simply in trading on the fact that one mental state can be relied on to call up another, a desired one, "because the two have been associated together in the history of the individual, or because a connection between the two has proved useful in the history of the race."[18] Sometimes the appeal to the instinct of the voter is direct, as by the politician who cultivates a pleasant smile, a hearty manner, and a not too discriminating taste in

[16] *Psychologie politique*, pp. 61–63. See also his *Psychology of the Great War*.
[17] *Op. cit.*, p. 167.
[18] *Ibid.*, p. 101.

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babies. More often it is indirect, through the use of words bearing a symbolic value, such as liberty, justice, loyalty, country, party, and so on. For the mass of men do their so-called thinking in such terms, or "entities," which they seem to assume have always the same validity whatever the facts of the particular case being dealt with, and response to which is, therefore, quite automatic.[19] Affection and interest, in other words, may be, and by the professional politician systematically are, "directed towards political entities which are very different from those facts in the world around us which we can discover by deliberate observation and analysis."[20] Furthermore, it is too much to hope—certainly this is the implication—that the thinking of men in the mass can ever be entirely purged of its inherited puerility. But well-intentioned men can be trained to beat the politician at his own game, while officialdom, with whom the future of society rests more and more, can be brought under the domination "of interest and variety, of public spirit and the craftsman's delight in his skill." Wallas's Utopia is a time when what we today call politics shall have been superseded by a professional public service with professional ideals and scientific methods.[21]

The importance of this book in supplying political science with a new outlook would be hard to over-estimate, and the appreciation of its contribution is apt to increase rather than diminish for some years to come. Time may be when *Human Nature in Politics* will be grouped with *The Prince* for its union of realistic outlook with a constructive intention. It is none the less necessary to recognize that the work has one important deficiency. Placing the reliance he did on "instincts" as the product of an assumed struggle for existence, Wallas was led into a two-fold error. In the first place, while dismissing with deserved opprobrium the intellectualist eighteenth-century version of the political animal, he under-estimated the plasticity of the human mental constitution; and he consequently, in the second place, permitted himself to be diverted from the most interesting single problem suggested by his book, namely,

[19] *Ibid.*, p. 84. [20] *Ibid.*, p. 98. [21] *Ibid.*, p. 268.

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that of the source of the "political entities" of which he makes so much. These he apparently regards as relatively fixed data,[22] if indeed they are not inherited along with the instincts of which they are categories or antennae, so to speak. We of today, however, with the lessons of the Great War and its propaganda, to say nothing of modern advertising, whereby the steady purchase of listerine has been rendered a social duty taking precedence even over forbearance from homicide, know better.

Nor are these the only developments that stand between us —I am thinking particularly of the United States—and the publication of *Human Nature in Politics*. Since then the regimentation of labor in the service of great industry has proceeded apace; since then the model of popular education has been nationalized as never before; since then the automobile has put everybody on the highways on Sunday ("all the automobiles in the United States, placed end to end, make a Sunday afternoon"); since then radio has come to aspire to an almost nightly "hook-up" of thirty million listeners in; since then Andy Gump and Barney Googles have become national figures. Subjected to this uniform, protracted, million-atmosphere pressure, the human mentality simply must take shape from it; wherefore the primary interest of the political scientist of today is significantly different from that of Graham Wallas. His interest was in the methods whereby the professional politician succeeded in eliciting the desired responses from certain fixed instincts; ours is in the method by which the professional politician and his imitators proceed in the first place to plant in the minds of people the responses which they know they shall want subsequently to elicit. And we are also interested in the political possibilities of a popular mentality resembling nothing so much as a conjuror's hat. We are thus brought face to face with behaviorism.

IV. THE GOSPEL OF BEHAVIORISM

For our purposes, no passage in the entire range of behavioristic literature can possibly be more intriguing than the following from Dr. John Watson's volume entitled *Behaviorism*: "In 1912

[22] *Op. cit.*, p. 61.

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the behaviorists reached the conclusion that they could no longer be content to work with intangibles and unapproachables. They decided to give up psychology or else make it a natural science. They saw their brother scientists making progress in medicine, in chemistry, in physics. Every new discovery in those fields was of prime importance; every new element isolated in one laboratory could be isolated in some other laboratory; each new element was immediately taken up in the warp and woof of science as a whole. May I call your attention to the wireless, to radium, to insulin, to thyroxin, and hundreds of others? Elements so isolated and methods so formulated immediately began to function in human achievement.

"In his efforts to get uniformity in subject-matter and in methods the behaviorist began his own formulation of the problem of psychology by sweeping aside all medieval conceptions. He dropped from his scientific vocabulary all subjective terms, such as sensation, perception, image, desire, purpose, and even thinking and emotion as they were subjectively defined.

"The behaviorist asks: Why don't we make what we can *observe* the real field of psychology? Let us limit ourselves to things that can be observed, and formulate laws concerning only those things. Well, we can observe *behavior—what an organism does or says*. And let me make this fundamental point at once, that *saying* is doing, that is, *behaving*. Speaking overtly or to ourselves (thinking) [Here the benign doctor seems to be trying to "slip one over;" but see below] is just as objective a type of behavior as base-ball."[23] The writer of these words is today the psychological expert of a large advertising concern, and is said to draw a salary of fifty thousand dollars a year. Can there be any question that this new method has enabled psychologists "to function in human achievement;" and if psychology, why not political science?

The central concept of behaviorism is the *response*, that is, the reaction of the human organism to external stimulus. Some responses, like breathing, are automatic and unconditional, but "conditional" responses are much more numerous, and the basis,

[23] *Op. cit.*, p. 6.

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or rather the content, of the individual's mental life. The behaviorist seems to admit—Watson, at least, does—that human beings have an innate capacity for fear, rage, and love, although the matrix of each of these emotions is, of course, held to be purely biological. Provided with this simple behavior pattern, the responses of infants to a given stimulus are fairly uniform, and soon become habitual. Thus man is a creature of education, and "personality" is only the sum of the habits foisted on him by his education. But suppose a man's habits fail to bring him happiness? In that case he should be provided with a new set of habits, which can be done by furnishing him with a new education, i.e. a new environment, a new set of stimuli. Yet while continuously plastic, the human mental (or nervous) constitution is most plastic in early childhood. Indeed, when it comes to the question of child training, Dr. Watson far outbids the Jesuits. They wanted a child for his first six years; Dr. Watson promises to head him for the scaffold or the throne within his first six months. What Dr. Johnson said of the Scot, Dr. Watson holds applicable to the human individual wherever found—"much may be made of him if you catch him early enough."[24]

Some other concepts of behaviorism according to the gospel of Watson may be dismissed more briefly. Memory—the term itself is taboo—is a dormant habit capable of reasserting itself when presented with the proper stimulus. Dr. Watson himself proved this to be so by experimenting with rats. Mind and consciousness are, on the same authority, "passing concepts;" language a collection of verbal objects; and thinking only talking to one's self, a process in which "your whole body is as busy as though you were cracking rocks, although your laryngeal mechanisms are setting the pace. . . . are dominant."[25]

A question obtrudes itself: thinking is a kind of muscular response—let it be granted—but response to what sort of

[24] See *Behaviorism*, chap. 5. The behaviorist position, though anti-intellectualist, is extremely egalitarian. It is a revival of Helvetius's contention that "intelligence, genius, and virtue are the products of education," and that differences of intelligence spring solely from this source. See Aldous Huxley, *Proper Studies*, p. 11.

[25] *Behaviorism*, p. 197.

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stimulus? For, no stimulus, no response. Dealing with this question at one point, Dr. Watson says that he gave a certain lecture because he was offered fifty dollars to do so. The answer seems inadequate. It may explain why Dr. Watson gave *a* lecture, but not that *particular* lecture—which may not have been worth fifty dollars. Elsewhere Dr. Watson returns to the same question in these words: "How do we ever get new verbal creations such as a poem or a brilliant essay? The answer is that we get them by manipulating words, shifting them about until a new pattern is hit upon."[26] That is to say, creative thinking is a game of anagrams. Nevertheless, the question still remains as to any particular poem or essay—why, that particular "new pattern" having been "hit upon," thinking thereupon ceased. Dr. Watson's apparent answer is that the mere satisfaction of achieving a *new* pattern—the "equivalent" he says "of getting food"—brought stimulation to an end; in other words, there was adjustment to the stimulating environment. So, in addition to fear, rage, and love, man would seem also to have an instinct which is satisfied only by achievement of novelty.

But such speculations are, after all, somewhat afield from our purpose. Our interest in behaviorism, apart from the confirmation which it lends to the thesis of the essential irrationality of popular political thought and action, is twofold; first, for the hope which, as earlier mentioned, it has stirred in certain bosoms of converting political science into a real science; secondly, for the rôle which it indicates for education in a democracy. Let us consider these matters in turn.

V. THE "IS" VERSUS THE "OUGHT-TO-BE"

Taking the position that "government itself is behavior," one distinguished political scientist contends that it becomes "possible for political scientists to cease considering their field as one of formal description and legalistic philosophy, and to regard it as a *natural science;* and furthermore, when so regarded, political science and behavioristic psychology become one and the same

[26] *Behaviorism,* p. 198.

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thing. There will, of course, be a difference of opinion as to whether the political scientist should accept a complete merging of his field with that of the psychologist. Many believe, and perhaps justly, in the existence of political facts *per se*, and in an order of reality cast in terms of social and political structures. Perhaps they are right . . . . . Some persons, however, will desire to discard the structural view as descriptively possible but as barren of promise for scientific understanding and control. These persons will see in the relation between political science and psychology not an overlapping but an identity."[27]

It would be gratuitous to comment on this passage from the point of view of one who, without the advantages of training in a psychological laboratory, has to make his daily living by teaching political science—so-called. Let me say, nevertheless, that even the psychologically trained political scientist should not be too complacent about his prospects. For in a later article this same writer gives us reason to think that possibly behaviorism is no better than it ought to be when regarded as a real science. Let me quote again: "He [the behavioristic psychologist] *begins*[28] to interpret behavior through the generalizations which can be given him by the neurologist and the general physiologist. The physiologist, in his turn, describes the action of nerve and muscle fibres and then analyzes the cells of which they are composed, either actually or conceptually (*sic*), into their organic, and finally into their inorganic, components. By the aid of generalizations in the fields of organic chemistry and physics, the nerve impulse and muscle contractions are interpreted in the simpler and more universal terms of chemical dissociation, electrical polarization, and the like. The physical chemist, in his turn, peers into such phenomena as electromagnetism and 'ether conduction,' seeking to identify a still more elementary plane upon which even broader generalizations can be discovered."[29] Is it not apparent that political science

[27] F. H. Allport, in Ogburn and Goldenweiser, *The Social Sciences and Their Interrelations*, p. 277.

[28] The present writer's italics.

[29] *Publications of the American Sociological Society*, vol. 22, p. 85.

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will not be a *real* science until the relation between it and chemistry has become "not an overlapping but an identity?" This consummation doubtless waits upon further knowledge regarding the nature and the function of the endocrine glands.

Meantime, the great obstacle in the way of making political science a natural science lies, of course, in the difficulty attending experimentation in this field; and that is three-fold. Scientific experimentation is describable with fair accuracy as the planning of a series of situations of which the recognizable factors will all remain constant except one, the importance of which will then be registered in the result. But while the chemist can plan an indefinite number of situations, the political scientist must usually wait for his situations to develop of themselves, and, what is more, when they do develop it is almost never in consequence of the alteration of a single factor, but rather of a multiplicity of factors. Lastly, and worst of all, whereas the natural scientist, being in a position to measure and control all the factors of a given situation, can select for variation the one that he thinks is of greatest importance for work needing to be accomplished, the political scientist is only too happy if he can isolate any factor at all, and without regard to its promise for future accomplishment.

Let us consider in this connection the achievement to date of "the new political science." For the most part, it comprises statistical studies in what one of its exponents terms "political behavioristic psychology"—in other words, of group or individual attitudes having political implications, with an effort to determine the factors of these. It would be quite impossible to exaggerate the impression left by the studies of this nature which the writer has seen, as to the competence of their authors; but as to the results obtained, the expression of enthusiasm may reasonably be more restrained. There was always an immense unlimbering of apparatus, an immense polishing of a technique already spotless; but it was all apparently for the sake of the game itself. The problems set were of no great evident moment, and the solutions provided either were inconclusive or merely substantiated what must have been the off-hand verdict of any

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rather intelligent and well-read observer. Nor is this to say that profitable experimentation is out of the question in the field of governmental activity—that is, experimentation of a sort. The student of municipal government is especially fortunate in this respect, for every municipality is a potential laboratory. Still, the question remains, What should be the objective of such experimentation? Should it be a compiling of statistics and a plotting of curves explanatory of why La Follette was not elected president, or to prove that most people are prone to classify a heavily bewhiskered person as a bolshevist rather than a banker; or should it be the ascertainment of the value, from the point of view of widely agreed tests of public welfare, of suggested governmental programs and expedients?

What, let it be asked therefore, is the outstanding lesson of political behaviorism—a lesson supplemented by that of war propaganda, of modern advertising methods, of the thing called vogue, and in a dozen other ways? Is it not the lesson of the indefinite educability, and even re-educability, of the masses? Is it not the lesson that if those who are best qualified by good will, lack of bias, trained minds, and precise methods to do this work as it should be done, and for proper ends, do not do it, others will—indeed are doing it at this moment—and for selfish ends?[30] Is it not, in short, that the real rulers of the race are those who educate it—who, in the words of Mr. Lippmann, "create consent"?[31]

Consider the matter of vogue alone, and its dictators. Says Mr. Wyndham Lewis in his too little appreciated volume, *The Art of Being Ruled*: "Were these rulers world rulers .... they would have the power to impose any orthodoxy they chose from China to Peru. They would be able to make a matron in Yokohama and Dublin simultaneously appear in a dress of lotus leaves, a vest of mail, a ballet-dancer's skirt, or a crinoline; to shave her head or dangle her hair in a plait; to see that she had seven lovers or to see that she confined herself to her husband .... that .... she was a confirmed vegetarian one

[30] *Par example*, the "Power Trust."
[31] *Public Opinion*, p. 248.

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week, and a hearty beef-eater the next . . . . . And she would be quite happy. All these things in any case can be observed around us in an imperfect, primitive form today".[32] There may be a slight strain of exaggeration about this, but the moral which Mr. Lewis deduces from it loses none of its manifest cogency on that account.

Again quoting from the same volume: "The harsh and ominous words, *ruler* and *ruled*, although they must be used, are in practice infinitely tempered to the shorn lamb in our educationalist era. Education plays, and will continue to play, a much more important part than physical and exterior force. Force is a passing and precarious thing; whereas to get inside a person's mind and change his very personality is an effective way of reducing him and making him yours. Merely to chain him up like a dog or a slave is the act of an unimaginative tyrant. To kill him is equally meaningless. It is by taking him when he is young and educating him that you can secure him to yourself. The physical part of power, like the bloody part of revolution, should not be insisted upon."[33]

Again a trifle of exaggeration possibly. Even so, is political science to be deterred by a touch of hyperbole from accepting an invitation to ascend the seats of the mighty? We have already seen the alternative that solicits; but, to be perfectly fair, let it be re-stated in the words of an exponent: "Social scientists have frequently attempted the impossible task of eating their cake and keeping it too. They have sought to retain scientific status for themselves and their subjects at the same time that they have sought to become arbiters of social goals and values."[34] The answer is, Why should the political scientist spend his time measuring stereotypes planted in the public mind by other people when he could be planting some of his own? The issue, indeed, is not whether the political scientist can have his cake and eat it too, but whether he shall trade his cake for a mess of pottage. And why should society be barred

[32] *Op. cit.*, p. 44.
[33] *Ibid.*, p. 98. See also p. 112.
[34] Stuart Rice, *Quantitative Methods in Political Science*, p. 157.

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from having a few arbiters of social values who know what scholarly method is, as well as so many of the other sort? There is certainly nothing about being an arbiter that inhibits one's using scientific, statistical, or any other device of intellectual precision.

That the primary task of political science is today one of popular education, and that therefore it must still retain its character as a "normative," a "telic," science, is, then, my thesis. Why, indeed, should there be another natural science anyway? The general obtuseness of the laboratory sciences to social values is boasted by their would-be imitators, and is as notorious as it is infantile. With modern physics and chemistry brandishing sticks of dynamite with the insouciance of a four-year old, what could be more preposterous than to induct political science into the same nursery of urchins?

One objection remains to be disposed of, namely, the suggestion that possibly the people will not want to accept the guidance which political science has to proffer. The objection should not be taken too seriously; with the success of contemporary biologists and psychologists before him in persuading the public that their pronouncements on any topic whatever are scientific, the political scientist should not be downcast. As an acute foreign observer has recently remarked, Americans, in "their sanctimonious way, are always ready to accept a theory" if "they think it is scientific."[35] Perhaps, indeed, this is just where "the new political science" will come in handy; it may not make political science more scientific, but it will make it *appear* to be so. So, all in all, there is no reason why political science should not become again what Aristotle thought it to be, the most important of all sciences—*the basic science*; and this even though it must still leave the reading of the future to physics, chemistry, and astronomy, not to mention astrology, alchemy, and palmistry.

A closing reference to behaviorism: modern democratic theory begins with a psychological theory, and it ends with one, and superficially they are one and the same theory; actually

[35] A. Siegfried, *America Comes of Age*, p. 114.

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the *tabula rasa* of the late John Locke and that of the extant John Watson are two very different things. The former is a photographic film which builds up its picture by a process of absorption; the other is an enticing white wall inviting human impudence to do its worst. Yet is there any reason why effrontery and self-interest alone should wield the pencil? And is there any reason why good will, scientific method, and intellectual independence should not? The real destiny of political science is to do more expertly and more precisely what it has always done; its task is criticism and education regarding the true ends of the state and how best they may be achieved. So far as it contributes to this end, the more of scientific method the better.

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SOCIAL ORDER AND POLITICAL AUTHORITY[1]

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IV. GROUP-PROCESSES AND AUTHORITATIVE LEADERSHIP

The first of these papers carried a warning against conceiving social order in an absolute sense. It does not mean suppression of all forms of competition and defeat, but only the protection of selected human interests at the expense of others. Even taking order in this limited sense, it was found that custom and voluntary adjustment furnish an incomplete apparatus for its furtherance. The effectiveness of custom was seen to be connected with the auxiliary activity of an organ of leadership to serve as a focus for the radiation of custom, and a pivot for change.[2] Voluntary adjustment, while capable of resolving many interest-conflicts beyond the reach of custom, was also found to rely largely on the initiatory activity of an organ of mediation.[3] Finally, we have thus far considered social order primarily from the point of view of the prevention or adjustment of direct conflicts of interests between individuals.

The functioning of a social group requires more than that its members should refrain from what other members resent as invasions of their interests. If the advantages of group life are to be reaped, it is necessary that at many points the group should, as we say, act as a unit, which means that each member should so shape his conduct with reference to the conduct of others that the acts of all, when thus geared together, will produce an aggregate or group result. This gearing together of the acts of separate individuals is what is commonly called "coöperation." Coöperation has value only as it furthers interests which belong to individuals. Therefore, as was pointed

[1] The first installment of this article appeared in this *Review*, vol. 23, p. 293 ff. (May, 1929).

[2] *Ibid.*, pp. 311–313.

[3] *Ibid.*, pp. 321–322.

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out, refusal by one individual to do his part in an established coöperative process may appear in the guise of an invasion of the interests of those who expect to share in the results of the process.[4] But coöperation requires more than readiness to participate. Even when this is assured, so that no interest-conflict arises between individuals, the success of the process requires that the parts be assigned, properly timed with reference to one another, and touched off into action at the critical moment.

We here confront a different social problem from the adjustment of direct interest-conflicts—a problem which may be stated as the need of group organization for group effectiveness. This need is usually met in part by custom functioning without conscious design, as where custom drills different individuals to perform at the proper time and in proper sequence different acts which dovetail into the patterns of cooperation peculiar to the group.[5] Under such circumstances there may be no need for central initiative or direction in the process. When, however, changes occur in the environment within which the process goes on, or for some other reason it becomes necessary to rearrange or alter the parts and their allotment, this can ordinarily be done only by central planning.[6] Such planning involves the adjustment of individual interests secondarily rather than immediately. Its immediate and major objective is to maintain or increase the effectiveness of the group process as a unit for attaining the aggregate result expected of it,[7] e.g., subsistence or defense. For this task the primary

[4] This *Review*, vol. 23, p. 297.

[5] B. Malinowski, *Argonauts of the Western Pacific*, pp. 8, 116, 157, 160; "Economic Aspects of the Intichiuma Ceremonies," in *Festschrift Westermarck* (1912); H. Powdermaker, "Leadership in Central and Southern Australia," *Economica* (June, 1928), p. 177.

[6] Professor A. M. Tozzer has emphasized the importance of the "crisis" as a factor in developing leadership. *Social Origins and Continuities* (1925), pp. 53, 213.

[7] This emphasis, which displays itself in the executive and legislative activity of a government, is reversed in its purely judicial activity. See Freund, *Standards of American Legislation*, ch. ii, and my *Administrative Justice and the Supremacy of Law* (1927), pp. 23–31.

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requisite is a survey of the needs and resources of the group. In modern democratic cultures, countless volunteers offer themselves for this task, and the programs put forward are legion; but since only one alternative can be ultimately adopted, there is need in complex no less than simple groups for a responsible source to which the group may look for definitive initiation of any program of readjustment, i.e., for initiative which they can follow in the assurance that it will be followed by the other members likewise.

Even where custom has automatically set the plan and assigned the parts in a coöperative process, it cannot ordinarily specify the act or event which is to start the process going. Whenever action is to be taken in a pattern or sequence by any considerable number of individuals, the process, even when the pattern is fixed, needs to be set off or initiated. There must be someone, as we say, to "take the lead," i.e., to make an initial decision which others will follow.[8] In warfare, for example, the place and function of every individual in the process after it has been initiated, the order of march, the plan of campaign, and the like, may all be prescribed by custom with machine-like precision. A decision to go to war cannot, however, eventuate automatically, because every such decision must respond to unique factors peculiar to each special emergency. Such a decision is therefore necessarily the result of initiative taken by some element within the group, even though the impulse thus given may at once run so freely through the other members that their resulting action will have the appearance of mass-spontaneity. So if the group is to assemble to perform a religious ceremony or consider matters of common interest, someone must call them together. Throughout the life of a group there

[8] This is true even of animals. The tendency of sheep to follow a bell-wether is well known. See also Darwin, *Descent of Man* (N. Y., 1903), p. 105. "What is the beginning of the migrations and construction-work of ant-hills? Is it by a common impulse, instinctive, spontaneous, springing from all the associates contemporaneously under the pressure of external circumstances submitted to at the same time by all? No,—an individual detaches itself, begins to work by itself. . . . . Imitation-contagion does the rest." Tarde, *Lois de l'Imitation*, p. 4, quoting Espinas, *Sociétés Animales*.

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is need for such decisions on behalf of, and for the benefit of, the whole, which can be initiated only by a single mind or small number of minds.[9]

Thus in the organization and functioning of coöperative processes no less than in the adjustment of interest-conflicts between individuals, an essential part is played by a focus or organ of leadership. Professor Myres has pointed out that *arché*, the generic Greek word for "government," means, in its etymological sense, leadership, or "initiative," of precisely this causal kind; it means "taking the lead in such a way that others will follow." So *imperium*, the Roman word for "governmental power," means setting the stage for something to happen, taking the initial step in a process.[10] There is no reason to suppose that government in this sense of authoritative leadership, i.e., leadership which others can be counted on to follow, has not always formed as central an ingredient in the apparatus of social order as custom and the voluntary adjustment of interests.

The number of matters concerning which the function of authoritative initiation is concentrated in a special organ is far smaller in primitive than in advanced societies. The decisions which initiate and give direction to the movements of a primitive group proceed largely from informal centers.[11] Where the need exists for an initiating decision, it is often impossible to predict from what source it will come. The act of leadership which will give direction to a group-process is simply the one which happens to come under such circumstances that the members of the group spontaneously follow it. In this connection, it must be noted that all human groups of any considerable size are composed of smaller groups, of which the simplest is the natural family. In this ultimate group the principle of a fixed center of leadership seems to have been most definitely

[9] "It is the individual who initiates, who invents, new ways of action." Tozzer, *op. cit.*, p. 53.

[10] J. L. Myres, *The Political Ideas of the Greeks* (N. Y., 1927), pp. 139–150.

[11] Howitt gives instances of such informal leadership. See *Native Tribes of Southeastern Australia*, pp. 301, 303, 304, 316, 319, 320.

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established from the outset.[12] The primitive family usually acts as a unit, and many of the discretionary decisions which have to be made within the gaps of custom are accordingly decisions on behalf of the family group and not on behalf of individuals. The result is that within the family there is always a tendency to develop an organ of authoritative initiation and decision, which naturally tends to be the father, or where several related families live together, the oldest male.[13]

At the lowest levels of social organization, the organ for making decisions on behalf of the composite or tribal group is likely to consist of a mere gathering or council of the leaders of the smaller groups.[14] Each of these, within his own group, makes authoritative decisions on a wider range of questions than the council decides for the whole tribe. Within the small group, where the sense of personal individuality distinct from the group is only slightly developed,[15] the headman is often allowed by the members to make decisions directly affecting the interests of individuals, for instance in connection with the management of family property[16] and the selection of mates.[17] On the other hand, the function of the tribal council

[12] At the lowest levels of culture, as among the Yahgan of Tierra del Fuego, the small family groups dwell separately without any organized connection with a larger community. "The only fixed authority recognized is that of a father over his family." Hartland, *Primitive Law*, pp. 11–12, quoting *Bulletin of Bureau of Ethnology*, lxiii, pp. 168 ff. Such independent family groups are found among more advanced nomadic peoples, *e.g.* the early Semites, and have often led to a high development of the principle of paternal authority.

[13] On authority within the smaller group, see Hobhouse, *Morals in Evolution*, pp. 48, 79–81, 102–104, citing numerous references for specific peoples. When the smaller units were combined into larger groups, the process was often aided by the fiction of common blood-relationship. E. Meyer, *Histoire de l'Antiquité*, iii, 63–64. For the present discussion, the special problems raised by "matrilineal" societies are not important.

[14] Lowie, *Primitive Society*, pp. 360–361; Malinowski, *Argonauts of the Western Pacific*, pp. 37–41.

[15] Ford, *Natural History of the State*, pp. 92–102, and authorities there cited, especially E. J. Payne, *History of the New World called America*, ii, pp. 199–202; W. K. Clifford, *Lectures and Essays* (2d ed., London, 1886), p. 291.

[16] Hobhouse, *op cit.*, pp. 326–330; Hartland, *Primitive Law*, pp. 97–103.

[17] Howitt, *op. cit.*, pp. 298, 301, 313, 321.

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is generally limited to fixing the date of tribal gatherings, deciding on war and peace, moving the location of the camp, and permitting or refusing to permit the reception of strangers.[18] The mere size of such a council tends to concentrate authority in a tribal headman, or chief, whose position at the beginning is more often informal than truly official.[19] The powers which it carries with it depend largely on the personality and prestige of the individual who happens to hold the post at any given time.[20] As religious conceptions advance beyond the simplest magic, those tribes seem to have achieved the most effective coöperation in peace and war which have personified the unity of their group life in a tribal deity, regarded as the spiritual embodiment of the group and director of the group activities.[21] Such a belief seeks visible expression for the group-unity in a single earthly spokesman and representative of the tribal god. Thus results the phenomenon of the "priest-king," which occurs at the upper levels of barbarism all over the world,[22] and the influence of which has survived in civilized countries until

[18] Howitt, *op. cit.*, pp. 323–325, 394, 662; Lowie, *op. cit.*, p. 361.

[19] For the concentration of authority in the hands of a tribal chief, due to the emergence of a strong personality, see account of the career of Jalina-piramurana among the Dieri. Lowie, *Primitive Society*, pp. 359–360. Such a position may easily become hereditary. Howitt, *op. cit.*, pp. 304, 305–306, 308, 310, 313, 316, 318.

[20] The qualifications resulting in leadership are various—age, reputation for skill in magic, military prowess, descent from a particular family. Instances of all these, and of various combinations of them, are found among the Australians. *Ibid.*, pp. 297, 304, 315, 316 (age); pp. 301–303, 313 (magic); pp. 302, 303, 314, 316 (prowess in war); pp. 301, 302, 308, 317 (combined qualifications). See Powdermaker, *op. cit.*, *supra* note 5. Among other peoples, wealth is a qualification. Lowie, *op. cit.*, pp. 227, 367. For the whole problem of the emergence and organization of leadership, see Lowie, *The Origin of the State* (N. Y., 1927); A. A. Goldenweiser, "Anthropological Theories of Political Origins," in *Political Theories, Recent Times*, ed. Merriam and Barnes (N. Y., 1924).

[21] E. Meyer, *op. cit.*, vol. i, 144 ff.; iii, 73–85; Durkheim, *Elementary Forms of the Religious Life* (tr. Swain), pp. 205–230. For a discussion of the relation between war and the tightening up of group organization, see Lowie, *The Origin of the State*, pp. 6–19; E. Meyer, *op. cit.*, vol. iii, 68.

[22] For instances of religious kingship, see Hocart, *Kingship*, pp. 7–15; for early India, U. N. Ghoshal, *Hindu Political Theories* (Oxford, 1927), *passim*; for the early Sumerians, E. Meyer, *op. cit.*, iii, pp. 151–152; for the Egyptians,

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recent times.[23] Where the group leadership comes to be concentrated in a ruler of this character, the powers and authority which go with it expand enormously, and bring under his control many matters not previously regulated by decisions of the leader. The growth of the functions of government to the scope which they hold in advanced societies seems closely connected with this stage of political development.

In the most primitive societies, the community organ of leadership concerns itself very slightly with interest-conflicts between individuals or smaller component groups.[24] If an individual feels aggrieved by the act of another, his only course is to retaliate, i.e., to seek to injure the other in return.[25] From the beginning, whatever leadership exists within a group doubtless attempts to prevent such disputes from being carried so far as to endanger the maintenance of established processes of group coöperation.[26] These efforts meet a serious obstacle when the component kinship groups solidify beyond a certain point. "Through the bond of kindred, retaliation develops into a system"—the system which we call the "blood-feud."[27]

ibid., ii, pp. 165–167, and Moret, *Caractère religieux de la royauté pharaonique*; for pre-Hellenic Crete, G. Glotz, *Aegean Civilization* (N. Y., 1925), pp. 147 ff.; for the Roman monarchy, Greenidge, *Roman Public Life*, pp. 51 ff. For combination of priestly functions with the chieftainship among the Maori, see Hartland, *Primitive Law*, p. 32; for other parts of Oceania, Rivers, *Social Organization*, pp. 162–163. It is Sir James Fraser's thesis that kingship developed from the function of the public magician, or medicine-man. He has collected an enormous amount of evidence in *The Golden Bough* (one vol. ed., N. Y., 1925), pp. 83–106. The importance of the supposed connection between kingly and divine power in securing obedience is illustrated by the attempts of monarchs like Alexander the Great and Augustus to consolidate a newly united empire by establishing the cult of emperor-worship. See E. R. Goodenough, "The Political Philosophy of Hellenistic Kingship," in *Yale Classical Studies*, vol. 1, pp. 55 ff.

[23] *E.g.*, in the form of the theory of the king as God's vicegerent, Bossuet, *La politique tirée de l'Ecriture*, V, iv, 1; and the recent Japanese conception of the divine right of the Mikado, G. E. Uyehara, *The Political Development of Japan* (London, 1910), pp. 19 ff.

[24] Rivers, *op. cit.*, p. 161; Hobhouse, *op. cit.*, p. 71.

[25] Howitt, *op. cit.*, p. 334.

[26] Hobhouse, *op. cit.*, pp. 93–95.

[27] *Ibid.*, p. 71; Marett, *Anthropology*, pp. 189–190.

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There are peoples like the Ifugao who apparently do not find that a régime of blood-feud in their midst interferes with group-processes which they value.[28] Among other peoples, endless internal vendetta threatens to become a dissolving force which the group cannot tolerate if its processes are to survive. Accordingly, wherever a strong organ of authority develops, one of the tasks it almost always undertakes is to protect the group processes by bringing the blood-feud under control.

One of the earliest forms which this effort takes is to reduce the conflict to a single definitive combat between the parties, the issue of which shall be accepted by both as ending the dispute.[29] The success of such efforts is connected with religious ideas which in time transform the whole mental attitude toward the redress of grievances. Trial by combat is in origin merely an attempt by an aggrieved party to satisfy his claim by his own personal efforts. In a mental environment where all physical occurrences are attributed to the direct action of supernatural beings, it is, of course, supposed that the outcome of the combat depends on the will of a god or gods. The combat can thus be regarded as an appeal to divine power to decide which party has the better claim, i.e., the one regarded more favorably by the gods. Thus the blood-feud becomes transmuted in the form of trial by combat into an application to an authoritative and impartial tribunal to decide between conflicting claims.[30] This is even more clearly true when the method of trial resorted to is the ordeal.[31] A new attitude emerges in this willingness not to insist on the satisfaction of interests, but to allow their validity to be tested by an impartial external agency, and to acquiesce in the result of the test, even though unfavorable[31a].

[28] See first installment of this article, *American Political Science Review*, vol. 23, pp. 324–325.

[29] Howitt, *op. cit.*, pp. 334 ff.

[30] Vinogradoff, *Historical Jurisprudence*, vol. i, p. 349.

[31] Maitland, *Collected Papers*, vol. ii, 448; Taylor, *The Mediaeval Mind*, vol. i, 231–232.

[31a] Dr. Goitein advances the interesting suggestion that this willingness is largely founded on what may be called the "aleatory" instinct—the willingness to "take a chance" and abide by the result. *Primitive Ordeal and Modern Law*, pp. 266–271.

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Along with efforts to dissolve the blood-feud into methods of decision less disruptive of established group processes, efforts are generally made by the group leadership to convert the objective of the contenders into something less destructive than mere vengeance. These efforts usually take the form of inducing the aggrieved party to accept reparation.[32] As authoritative leadership, or government, becomes stronger, one way in which its strength manifests itself is by exertions to make this substitution compulsory.[33] At this point the central organ of authority in the community visibly begins to exercise directive control over the behavior of individuals in matters connected with purely private interest-conflicts. It begins to tell them that they must do certain things, and not do other things. The number of these things is at first confined to the minimum essential to preserve what we speak of as the "public peace." The governing authority does not as yet tell one individual not to assault another; it does no more than tell the victim that he must not retaliate if the offender offers the wer-geld. At the same time, it informs the offender that if such an offer is not made, a government official will seize his property to an amount equivalent to the sum which should have been offered.[34] This means that government becomes, although as yet within narrow limits, an agency for defining the line between the sphere of action of one individual and interests belonging to others.

It is important to note that this interference of government with individual interests grows out of, and is directly connected with, its function of organizing and administering coöperative

[32] Hobhouse, *op. cit.*, pp. 75 ff. The practice of offering and receiving composition tends to become customary, and a customary tariff of payments establishes itself. Vinogradoff, *Custom and Right*, p. 35. But such a custom, unlike other customs in that it is applicable only to a situation when a dispute has already occurred and blood is heated, is never as completely self-enforcing as customs of private every-day behavior (so-called "non-litigious" customs). It establishes an expectation without giving much assurance that the expectation will be satisfied. This is a characteristic of all customs which relate to the settlement of disputes until an authority is established to enforce them.

[33] Jenks, *Law and Politics in the Middle Ages*, pp. 102, 105–106.

[34] Lex Salica, 2; Boretius, I, 283.

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group processes. The earliest activities of government, such as dictating the movements of the group, deciding questions of war and peace, and the like, involve the placing of direct restrictions on the conduct of individuals. When the group leadership, for example, determined that the group was to move in one direction rather than another, the effect was to require all the members to move in the direction decided on, and thus destroy the liberty of each to move in any other direction which he might personally have preferred. Similarly, when the group leadership decided to make war, the result was to impose on the group members the burdens of war-time existence, and to that extent require them to do certain things not otherwise necessary. The object of these interferences with individual freedom, which were sometimes enforced by summary punishment,[35] was simply to enable the group processes to continue to function. In the same way, it was the maintenance of the group, threatened with dissolution by internal feuds, that led the governing organ to interfere in the settlement of private interest-conflicts. The object was not to provide an agency better adapted than the feud to reach a "just" result between the parties, or one more satisfactory to them, but to restrain them from private efforts to reach adjustment which might disrupt processes of coöperation on which other members of the group depended.

This connection of the governmental function of deciding disputes with the function of maintaining group processes must be kept in mind if we would rightly understand the former

[35] From practically the outset of group life, something approximating to a public criminal jurisdiction is almost always exercised by the group leadership in punishing individuals whose conduct threatens to bring disaster on the group. A striking example is the so-called "buffalo-police" among the Plains Indians. Lowie, *Primitive Society*, p. 385. Offenses so punished were, however, almost always of a religious or sacral character, *e.g.*, sorcery, divulging religious mysteries, etc. See Howitt, *op. cit.*, pp. 297, 332, 341–344; Hobhouse, *op. cit.*, pp. 88–92. "The evolution of criminal justice may be looked at as an extension of the conception of a tribal offense till it covers every serious wrong done to a single member of the tribe." *Ibid.*, p. 92. Professor Calhoun thinks that a true criminal jurisdiction did not emerge in Greece until the time of Solon. G. M. Calhoun, *Growth of Criminal Law in Ancient Greece* (Berkeley, 1927), ch. iv.

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function in advanced societies. When government interferes in a private interest-conflict, it is ultimately because of the effect which such interference, or its absence, will have on interactions within the group belonging to some process of group effectiveness. If government concerned itself with a controversy between individuals without reference to the bearing of the controversy on interests of other members of the group, its interference would have a quality of unreality, in that there would be no practical standard for determining whether or not the interference ought to occur, and, if so, what should be its nature and direction.

Authoritative demarcation of conflicting interests by a human agency external to the parties represents a method of social control essentially different from, and yet complementary to, adjustment by custom on the one hand, and by voluntary act of the parties on the other. The special advantage of this type of control is its combination of flexibility with effectiveness. It supplies an agency ready to intervene when conflicts in any field of human relations threaten interests of group members besides those directly in conflict, and when voluntary adjustments between the parties have proved impossible or ineffective. The adjustments which such an organ can introduce are available to resolve novel kinds of conflicts without waiting on the slow and uncertain crystallization of customs. At the same time, a way is supplied for dealing with conflicts occasioned by the persistence of customs which have become obsolete, or by the emergence of inconsistent customs. These results are possible because adjustment by impartial decision, like voluntary adjustment, proceeds through conscious effort to solve situations as they arise. It proceeds to this task with greater assurance of success because the effort is applied by an agency external to the parties, and not by the parties themselves.

So long as an authoritative organ for the adjustment of differences is absent, the tendency of each party to a conflict to push his own claim to the limit often prevents inconsistent claims from being brought into stable equilibrium except by

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the more or less complete victory of the claim which can exert the greatest pressure against its adversary. With the establishment of an authoritative agency of decision, interests and psychological factors are set up which tend to avert this result. The parties, in addition to the interests which keep them apart, are supplied with a permanent interest of great strength which they share in common, in the form of their common respect for the organ of authority and their resulting willingness to accept its decision. This organ is, in fact, regarded as speaking on behalf of the group in matters in which it is believed to be essential for the maintenance of group processes that there should be final pronouncement by a single voice. All the individual interests which attach to the continued functioning of the group processes accordingly focus in common willingness to obey this voice. In this common and permanent interest, individuals find a foothold of agreement usually strong enough to overcome the strength of conflicting interests. Perhaps no force in human history has worked more effectively toward lessening the sharpness of differences between man and man, and thus making orderly coöperation possible, than the willingness of men to lay their differences for final settlement at the feet of authority. As Mr. Balfour has put it, "Though it may savour of paradox, it is yet no exaggeration to say that if we would find the quality in which we most notably excel the brute creation, we should look for it not so much in our faculty of convincing and being convinced by the exercise of reasoning, as in our capacity for influencing and being influenced through the action of authority."[36]

It is of the essence of authority, in the sense in which the word is here used, that its exercise should be vested in a definite organ. It is, of course, possible to speak in a figurative sense of "authority" as attaching to the operation of impersonal forces like tradition or public opinion. There is always, however, the possibility that contending individuals will hear the pro-

[36] *Foundations of Belief*, p. 243.

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nouncements of such impersonal authorities differently. In order that the element of finality may be present, on which the conciliatory power of authority so largely depends, it must speak with a clear and certain voice which announces the same decision to both contestants. Furthermore, a large part of the effectiveness of authority is due to psychological motives of sentiment, loyalty, reverence, which are most likely to attach to a concrete visible person or institution. Individuals at a high level of intellectual development doubtless find it possible to center their loyalty on the abstraction of a country or cause, but men in general seem to conceive the degree of sentiment which is capable of overriding selfish interests only toward a person or object which appeals immediately to some of their senses—Pope or Kaiser or the *fasces* of the Roman lictor.

In addition to such centralization in an organ which can attach to itself the interests of individuals in the group processes, and personify those processes as an object of loyalty, authority depends for effectiveness on belief in its impartiality. Adjudication by an authoritative organ is accepted by both contestants because each regards the resulting decision as emanating from a source too high to be contaminated by the hateful interests of his adversary. It represents the application to the dispute of an external standard by which both parties are content to have the scope of their interests measured, and thus it inevitably raises the problem of supplying such a standard.

V. AUTHORITY AND LAW

From the standpoint of a mature political system, the danger of allowing an authoritative organ to delimit the area within which individuals shall be free to further their interests presents itself as the danger of "arbitrariness." For this reason it has become commonplace to insist that such an organ shall act according to settled rules, or, as we say, according to law. Law as a body of known public rules of decision throws across individual interests the barrier and the protection of legal rights and duties, and thus supplies a standard which gives confidence

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in the impartiality of the adjudicating organ. The origin of this point of view can be traced in primitive institutions; but the primitive approach to the problem of finding such a standard was initially different. Primitive men have confidence in the "rightness" of their ruler's judgments because they believe those judgments divinely inspired.[37] Primitive man is a pragmatist—"right" is the thing which works, which produces the good things he desires. Divinity attests itself by its fruits.[38] The ruler who by success in war, in the chase, and in achieving prosperity for his people, gives evidence of his divine nature, thereby sets the seal of "rightness" on his decisions.[39] They are accepted in a spirit of hero-worship, and out of willingness to follow a successful leader, rather than because of their conformity to established rules.[40]

[37] "In the earliest time 'right' appeared to be of divine origin." R. Hirtzel, *Themis, Diké und Verwandtes* (Leipzig, 1907). Primitive man was sure there was a right, but he did not always claim to know it—he was content to leave such knowledge to the gods.

[38] Primitive man's conception of divinity was broad enough to include much of what we mean by "personality," in the sense of personal effectiveness. This quality of getting results was regarded as an indwelling divine power, to which the name *orenda* was applied among the Iroquois, and *mana* among the Melanesians. See Harrison, *Themis* (Cambridge, 1912), pp. 63–68. Professor Myres sees something of this notion of "drive" in the primitive conception of *arché*. *Op. cit.*, *supra* note 10, p. 158.

[39] The doctrine that calamities, plagues, famines, etc., are proof that the ruler is displeasing to the higher powers survived far down into medieval political thought. See my *Statesman's Book of John of Salisbury*, p. lxx. For the idea in ancient China, see K. C. Wu, *Ancient Chinese Political Theories* (Shanghai, 1928), p. 14; in India, Ghoshal, *op. cit.*, *supra* note 22, p. 140; in Greece, Homer's *Odyssey*, xix, 108.

[40] When the Homeric kings handed down their dooms, or "themistes," the latter "were not framed in accordance with any body of law. *Diké*, or rightness, guided the royal judge" (Halliday, *Growth of the City State*, p. 71) as he held the magic sceptre, while Themis, the "prudent counsel of the gods," pointed out to him the practical advantages and disadvantages of the alternatives before him. For Themis in this sense, see Hirtzel, *op. cit.*, *supra* note 37, pp. 4, 7–8, 9–11, 19; but see E. Weiss, *Griechisches Privatrecht* (Leipzig, 1923), i, 19. This conception is carried forward in later royalist thought in the theory of the king as "animate law" (Goodenough, *op. cit.*, *supra* note 22, pp. 65 ff.). Law is not so much a known rule as the king's will for justice.

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From the beginning, however, there is a tendency in primitive thought which makes for the reduction of authoritative decisions to rules. The basis of early magic is belief that the action of the powers which govern the world is characterized by uniformity in the face of like situations.[41] This belief, which is the embryo of the modern scientific conception of an orderly universe, underlies the devotion of primitive men to custom, and leads to the conviction that the same act must always be done in the same way if it is to be done "rightly." The view consequently emerges that the will of the gods with regard to the decision of a controversy must be the same as their will with reference to other controversies of like kind.[42] The primary function of the adjudicating organ, when called on to decide a conflict of interests, is, therefore, to repeat the decision reached in a previous conflict of the same character. In this way there is introduced into the process of adjudication the all-important doctrine of precedent, which, more than any other cause, has made possible the growth of law in societies which have adhered to it, while its failure to develop among other peoples largely accounts for their inability to resist arbitrary power. Law, in the sense of rules which require the same decision to be reached in cases of like kind, results automatically and unconsciously from the application of precedents.[43] The governing organ thus comes to be imprisoned within the channels of its own customs;

[41] Frazer, *Golden Bough* (one vol. ed.), p. 49; E. Meyer, *Histoire de l'Antiquité*, vol. i, p. 142 ff.

[42] That the will of the gods was subject to a higher necessity was a commonplace in the Greek conception of *Moira*, or fate. E. Burle, *Notion de Droit Naturel dans l'Antiquité Grecque* (Trevoux, 1908), 28–31. It was an easy step from this notion to the conception of a body of "natural" law consisting of rules that could not be changed even by the gods themselves, *i.e.*, an order of nature to which all rules of decision must conform. See Myres, *op. cit.*, lecture v; Weiss, *op. cit.*, i, 68 ff.

[43] All primitive law rests on precedents, although this is not always recognized, because they are not written. Maine, *Ancient Law*, pp. 11–13. "The primitive view regards law, not as something which lays obligations on individuals, but as a limitation on the otherwise free discretion of the judge." Weiss, *op. cit.*, i, 30.

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its behavior, like primitive behavior generally, falls into a customary pattern.

The existence of settled customs of decision makes it possible to foresee the adjustment which the governing organ will effect for a particular interest-conflict, and thus influences in advance the conduct of the parties. If a man realizes that, in pressing his interests beyond a certain point in opposition to the interests of another, he will not be sustained, but will be subjected to some disadvantage, by the adjudicating organ, this knowledge is likely to operate as a deterrent to his going as far as he might otherwise have gone. The existence of the rule thus serves to mould the conduct of individuals to the interests of others, with the result that rules of decision tend to set up customs of private behavior. They become facts in the environment to which, like other facts, customs tend to adapt themselves.

On no subject has there been greater confusion than on the relation between law and custom.[44] Both are uniformities. The essence of both is the assurance of like responses to like situations. The outstanding difference is that law refers primarily to like acts of decision by an adjudicating organ, while custom refers to acts of private conduct not specifically contemplating judicial determination. To bring out this distinction, custom in the latter, or usual, sense of the word, is sometimes designated as "non-litigious" custom.[45] Confusion arises, however, from the effect, just noted, which law may have on custom in the non-litigious sense, i. e., from the tendency of settled rules of decision to promote customs of private behavior. This influence of authority on the formation of non-litigious customs raises the broader question of the relation of law to customs of this character which it finds already established. Does law conform to, and operate to "enforce," them, by supplying additional motives for their observance? Can it be said that the uniformi-

[44] See my articles, "The Law Behind Law," *Columbia Law Review* (February and March, 1929), xxix, 113, at pp. 125–141.

[45] Vinogradoff, *Historical Jurisprudence*, vol. i, p. 168.

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ties of judicial decision are somehow derivatives from, and copies of, these existing uniformities of non-litigious conduct?

The earliest rules of judicial decision relate, not to the conduct of the parties which creates the interest-conflicts in dispute, but rather to the procedure of adjudication.[46] It seems clear that procedural rules cannot simply have been borrowed from the customary behavior of individuals. While many such rules may have been imitated from practices of voluntary mediation and arbitration which preceded authoritative adjudication,[47] other rules must have been invented to compass the special purposes of the new method of adjustment. On the other hand, in the case of rules defining substantive rights and wrongs, it is usual to assume that these must have been borrowed from non-litigious customs.[48] It is doubtless true that among the reasons leading a court to approve the conduct of one of the parties to a dispute may be the fact that such conduct is customary.[49] The object of adjudication being, in the last analysis, to maintain group processes, and these processes being largely embedded in existing group customs, it is likely that if one party has done what the court regards as customary, the interest of an adversary which has been violated by such conduct will not be granted protection. In such a case it seems natural to say that custom, in the sense of the daily practice of the community, is the rule of decision applied by the court.[50] Thus to identify non-litigious customs with legal rules is, however, apt to blur the distinction between the operation of custom as an independent agency of social control and the altogether different method of control through authoritative decision. It seems to

[46] Vinogradoff, *Historical Jurisprudence*, vol. i, p. 353.

[47] *I.e.*, the "litigious customs" referred to above, note 32.

[48] E. Jung, *Das Problem des Natürlichen Rechts* (Leipzig, 1912), p. 155, citing Ehrlich, *Tatsachen das Gewohnheitsrecht;* Kuhlenbeck, *Natürliche grundlagen des Rechts und der Politik*, p. 170.

[49] Cardozo, *The Paradoxes of Legal Science* (N. Y., 1928), p. 15; Salmond, *Jurispudence* (7th ed., 1924), p. 208; Lefroy, "Basis of Case Law," *Law Quarterly Rev.*, vol. 22, p. 303. For an illustration, see Vinogradoff, *Custom and Right*, p. 35.

[50] Vinogradoff, *Historical Jurisprudence*, vol. i., p. 368.

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imply, as the only difference between the two, that when custom operates in the form of rules of decision, an added sanction is put behind it in the form of the enforcing power of government. The processes of adjudication and government are thus represented as merely auxiliary to custom.

Such a view minimizes the contributions to order made by social control through governmental action. Government has established and strengthened itself as a method of control largely to supplement certain defects of control by custom. The function of government in merely enforcing the observance of non-litigious custom is, at best, relatively secondary, in either primitive or advanced communities. When a field of conduct is canalized by custom, there is not usually much need for resort to other agencies. Occasionally an individual may be rash or adventurous enough to deviate from a settled custom, and in such instances public disapproval may demand to be reinforced by the disciplinary action of government.[51] The chief need, however, for other agencies than custom arises where there is a gap in the network of custom, or where custom is breaking down. Many of the disputes which have to be dealt with by the governing organ are precisely those which arise out of conduct not canalized by custom. Had they been covered by custom, there would normally have been no dispute. Obviously it cannot be said that the rules applied to reach decisions in such cases are borrowed from custom, since it is the absence of custom which creates the need for adjudication. This is true also where a custom has broken down, or is beginning to break down, under the pressure of new interests, or where inconsistent customs have grown up independently of one another and come into conflict. What the court must do in such instances is to determine whether or not it will approve conduct conform-

[51] This was true, for example, of breaches of marriage customs, which, because they were supposed to bring on the community the wrath of the gods, were among many peoples subject to the early criminal jurisdiction discussed in note 35 *supra*, and in the passages in Howitt and Hobhouse there cited. So of the litigious customs referred to in note 32.

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ing to custom[52]—in other words, pass on the validity or invalidity of customs.[53]

The possibility of such direct control over customs by a central organ is a major advantage of the system of authoritative control. One of the defects of control through custom is its inflexibility, resulting in the persistence of old customs after the special situations to which they were adaptations have passed away. Such customs prevent the emergence of new interests and technology better conforming to new needs of the community; or, if these make their appearance, friction and frustration result from their incompatibility with customs surviving from the old order. One of the valuable features of governmental control is its ability to coöperate with forces of change and development which meet obstacles in the form of established customs.[54] Government often serves as a liberating agency through which such forces can exert a concentrated power to clear a way for themselves through the network of established order.[55] Perhaps the most conspicuous instance of such a power exercised by government over custom was its suppression of the blood-feud.

Ordinarily, government cannot hope with success to attack directly any of the more firmly rooted customs of the community. Its effectiveness depends on the willingness of members of the community to accept the standards which it applies. If these happen to be in open opposition to modes of behavior ingrained by custom, the customary rules can generally enlist

[52] For the difference between a rule of custom and a legal rule of decision, even when the latter accepts the former, see H. Goitein, *Primitive Ordeal and Modern Law* (London, 1923), pp. 210–213.

[53] See such cases as Y. B. 12–13 Ed. III (Rolls Series 236); Freary v. Cooke, 14 Mass. 488; Metcalf v. Wild, 14 Gray (Mass., 1859) 210; Sieger v. Slingerland, 2 Caines (N. Y., 1804) 219; Hollis v. Wells (Pa., 1845) 3 Clark 169; 5 *Pa. Law J.* 30.

[54] "The history of law is in effect the history of the critical moments in the changing of custom, and rules of law may be looked on as the accumulating deposit of the social solvents of custom." Goitein, *op. cit.*, p. 214.

[55] For the enormous importance of this task, see Frazer, *Golden Bough* (one vol. ed.), pp. 47–48.

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in their support psychological factors more powerful than those which make for obedience to governmental precept. Not infrequently a really strong government may be powerful enough to crush out prevailing customs by force. This was true, for example, of the Norman government of England and of the Revolutionary government of France.[56] The success of such an effort always depends, however, on the strength of external contributing factors. Unless new interests incompatible with the custom under attack are crowding in and lending aid to the governmental attempt to suppress it, the effort will ordinarily prove futile.[57] Government, in other words, like every human agency, must operate in general conformity with the tide of events, rather than against it, if it desires to accomplish results.

Theories which identify law and custom seem generally due to a desire to find legal institutions fully present in their antecedents, and to prove law prior in time to the establishment of an organ of authoritative decision.[58] This view is perhaps most often pressed for the purpose of claiming "legal" character for international law. Instead of regarding the growth of law as an incident of the activity of an authoritative organ of decision, such a view promotes the notion that a court cannot come into existence until there is already in existence a law for it to administer, and thus plays into the hands of those who allege the uncertain character of existing international law as an argument against the establishment of an international

[56] It was also true of the government of the Hildebrandine papacy in the Church, which affords one of the most interesting instances of a successful war of authority against custom. See P. Fournier, "Un Tournant de l'Histoire de Droit," in *Nouvelle Revue de Droit Français et Etranger*, vol. 40, pp. 139–141 (1916).

[57] As in the case of the alterations in cultural and economic interests which made possible and sustained the legal changes effected by the Revolutionary government of France.

[58] "The creation of judges everywhere antedates the existence of formal law. But though formal law does not at first exist, the law itself exists, or there would be no occasion to appoint a judge to administer it." J. C. Carter, "The Ideal and the Actual in the Law," *American Law Review*, vol. 24, p. 759.

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tribunal. To suppose that law must antedate in time the establishment of courts makes it impossible to understand the characteristic features of legal order, and leads to confusion between law and the conditions which make law possible.

Those who would find law antecedent to authority sometimes claim to discover it in the feeling of right and wrong of the parties to a dispute, and in their expectations of mutual behavior.[59] Professor Erich Jung, for example, assumes that there is law as soon as an individual demands a particular kind of conduct from others and begins to enforce what he conceives to be his "rights" against them. "Wrong in the basic sense is any violation of an interest, anything which is felt as unpleasant by the other party."[60] "Legal compulsion does not presuppose an authoritative establishment of law, a decision by the state."[61] To speak of subjective unilateral claims of "right" as constituting legal rights seems a misnomer unless we conceive of law as supplying conflicting solutions for the same controversy, each corresponding to the claim of one of the parties.[62] Law in such a sense would serve, not to adjust differences, but to aggravate them. Jung is therefore compelled to admit that legal rights

[59] The fact that individuals settle their disputes without recourse to authority by no means implies that they settle them according to law, or that law exists, as seems to be often assumed, *e.g.*, by Jung, *Das Problem des natürlichen Rechts*, p. 98. One dispute may be brought to voluntary settlement with one result, another of substantially the same kind with a wholly different result. If uniform ways of adjusting disputes of the same kind grow up, as they occasionally do, they result in either a moral idea or a custom, which furnishes the raw material for a rule of law; but the difference is that such a custom or idea is followed only in the cases—not always numerous—where its content happens to satisfy both parties, while a law, whatever its content, appeals, because of its authoritative source, to all the interests connected with the maintenance of the group processes. Hence the difference in effectiveness between the rules of so-called international law and those of positive municipal law.

[60] Jung, *Das Problem des natürlichen Rechts*, p. 91.

[61] *Ibid.*, p. 94.

[62] The intransigeance of such claims, supported by a subjective sense of right, is discussed by Goitein, *op. cit.*, *supra* note 52, pp. 257, 258, and by Dewey, *Human Nature and Conduct*, p. 83. Yet Jung undertakes to say: "The rules as to the existence or non-existence of a legal violation are derived and secondary; the obligation to lawful conduct does not exist because such rules exist, but these

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are determined not so much by the subjective feeling of the claimants as by the opinion of impartial observers in support of the claim. This impartial opinion he identifies with the opinion of the community. "A right means that the person having it can apply force against him who violates it without incurring the condemnation of the community. The reaction of an interested individual against conduct which he regards as wrong, supported by the feeling of impartial observers, ... is the original appearance of legal life."[63] "According to this view, international law, although it as yet possesses no means to establish a definition of violation binding on the parties, is nevertheless law, because the existence of a community among states, although not organized, is still so far recognized that the members of that community have certain duties with respect to one another. The undefined subjectivity of the judgment as to the content of those duties will inhere in the search for legal order among peoples so long as an organization of the supernational community is lacking."[64]

The sentence last quoted appears to admit the inability of the unorganized opinion of a community to supply an objective test of the content of a right, i.e., to supply a determination of legal right in any sense in which the term is valuable. This is because in most disputes there is likely to be either a difference of opinion among the impartial group members parallelling the difference between the parties,[65] or else there will be an absence of interest in the dispute, or of any opinion about it, on the part of the

rules exist because the former obligation exists. Rules and concepts form themselves about uniform individual reactions which repeat themselves in similar situations because the individual members of a legal community react in a certain constant fashion to a particular kind of conduct." *Op. cit.*, pp. 100–101. This is true in so far as law conforms to settled custom, but nowhere else. Hobbes placed his finger on the crux of the problem when he pointed out the need for "a common measure of all things that might fall in controversy; as, for example, of what is to be called right, what much, what little, what *meum* and *tuum*." *Elements of Law* (ed. Tönnies, Cambridge, 1928), pp. 149, 150.

[63] Jung, *op. cit.*, p. 65.

[64] *Ibid.*, p. 93.

[65] This is admitted by Jung, *ibid.*, pp. 102–103.

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members of the community not immediately concerned. It is for controversies of this character that adjudication is often most urgently needed in the interest of order. The determination reached by the organ of decision may be, and usually is, acquiesced in by the community; but public acquiescence in a decision does not necessarily mean that the decision is made *by* the community, or that the community would not have acquiesced in a decision of contrary tenor. Usually acquiescence by the community, no less than by the parties, is due less to affirmative agreement with the substantive content of the judgment than to willingness to accept an authoritative decision merely because it is authoritative. Failure to recognize this fact seems due to the widely prevalent confusion between a decision made *on behalf of*, or for the benefit of, the community, and acquiesced in by it, and a decision made by the community.[66] A decision accepted by the community without protest need not be the decision which would have been arrived at by majority vote, or by any other method of testing anything that can properly be called community opinion.

The defect in the theory which derives law from the impartial "community sense of right" is that it confuses a condition necessary to the existence of legal order with the active creative source of law. No doubt, law could not come into existence if men did not think impartially in terms of right and wrong, and recognize the fact that some measure of respect is owed to the interests of those with whom they regard themselves as living

[66] This confusion is enhanced by the legal doctrine, perfectly admissible if properly understood, which conceives a relation of principal and agent as existing between the organized community and its authoritative organ, and which therefore attributes to the former the acts of the latter. The identification was further promoted by the tendency of early thought to personify the group by a living symbol, god or king, which produced the view that the king was himself the state, or organized community. Goodenough, *op. cit.*, *supra* note 22, p. 86. Finally, when various forms of "popular" participation in government were introduced, it became commonplace to conceive the community as acting not merely in a legal but in an actual sense, without realizing that it can so act only through some specific form of organization, i.e., through some official mouthpiece.

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in community.[67] But this category, or form, of thought does not exclude the widest variety of opinions as to the substance of the particular right and wrong of any given controversy. Law, on the other hand, means precisely a judgment of right and wrong, which, because of practical need for a decision, shall prevail over differences of opinion. As such, it can only result from a selection between competing views made by some organ recognized as competent to decide.[68] The unwillingness to admit that law is thus dependent on the action of authority is usually due to conceiving law as somehow a self-sufficient and independent agency of control, working like custom through a vitality of its own.[69] This view is often promoted by the perfectly proper desire to erect law into a means of control over authority. It seems, however, to be supposed that if law is to serve this purpose, it must derive from a source external to authority, so that the two can be set in competition. Such a conclusion overlooks the fact that, although law may be nothing more than regularity in the action of authority, this habit of regularity constitutes a valuable guarantee against arbitrari-

[67] Thus, Jung is quite correct in pointing out that "a presupposition of the appearance of legal concepts is the existence of a community of members regarding one another with a certain amount of respect." *Op. cit.*, p. 67.

[68] According to Hirtzel, a recognition of this seems to have been a basic element in the Greek conception of *diké*, or "justice." *Diké* "is the blow which, falling between the parties, has equal and impartial authority for both, through which therefore right appears to realize itself in opposition to strife. Upon the dark background of strife right brightens in the form of the decision of the judge which brings an end to contention." *Op. cit.*, *supra* note 37, p. 103. "*Diké* points to a relationship between parties both of whom have rights—relationship in which right is not all on one side. . . . . The free intercourse between such parties is regulated by *diké*, which determines the limits of the opposing claims. There is always at the basis of the nation a judicial decision, actual or conceived. Where this does not reach, *diké* also ceases." *Ibid.*, p. 128. To the same general effect, Goitein, *op. cit.*, *supra* note 52, pp. 265–275. See also Hobbes, note 62 *supra*.

[69] For a good exposition of this view, see Jenks, *Law and Politics in the Middle Ages*, pp. 295 ff., where it is suggested that law as a social force is older than human society, and inhered in animal instinct. If law is taken as identical with the tendency to uniformity in conduct, such a view is admissible; but to take law in such a sense is to make it impossible to understand many of its more important characteristics.

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ness, even if the particular regularities followed may result from choices made by authority itself.

To exclude authority from the exercise of choice and discretion would destroy the function for which it exists. As was pointed out earlier, many decisions on behalf of a group have to be made by the group leadership in response to unique situations—decisions to make war, to migrate, to form an alliance, to establish a new cult. Such decisions can obviously not be made in accordance with rules. Even, however, in the case of decisions made to determine individual interest-conflicts, there are times when the adjudicating organ must reach its result without reliance upon an established rule.[70] This is true, for example, of every case of first impression, i.e., every case involving a controversy of a kind not before decided, and where there is no precedent to follow. These are precisely the cases which establish precedents, and hence rules of law,[71] and they reveal the rule as always a by-product of the act of decision.

The power of discretionary decision which thus generates new rules for new types of controversy is called into play when existing rules of decision no longer work satisfactory adjustments in the face of new conditions. As a community develops, the chief problem connected with its governmental organization is how to secure that flexibility of direction which authoritative control is capable of supplying, while at the same time retaining the advantage of government through known rules. In other words, what is needed is a way of effecting changes from time to time in a body of rules which in the intervals of such change are treated as permanent. This process is what we today call legislation. The essence of the legislative function is precisely the power to depart from precedent and establish a new rule

[70] "Before the law, then, we have justice without law, and after the law and during the evolution of law we still have it as a non-legal element under the name of discretion with reference to the requirements of individual cases." Pound, "Justice According to Law," *Columbia Law Review*, vol. 13, p. 697. It is to conceal this element of discretion that the king is spoken of as "animate law," *supra* note 40.

[71] See my article, "The Law Behind Law," *supra* note 44, p. 117.

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for future decisions which shall differ from the rule applied in the past.[72] The essential characteristic of social control through an organ of central decision, which is its capacity to effect special-interest adjustments to fit particular kinds of conflicts, comes to light in the exercise of the function of legislation, i.e., in the initial choice of a rule, from a number of possible ones, as the rule to be applied in future cases. Legislative action involves, openly and directly, an adjustment of interests by the legislator.

We are now in a position to summarize the part played by authority in community life. Through its power of decision on behalf of the group in the face of unique situations requiring action by the group as a unit, through its adjustment of functions and interests within the group in accordance with rules of its own choosing, and through its power consciously to readjust and adapt these rules to relatively permanent environmental changes, and thereby effect deliberate alterations in the structure of group processes, authority performs in the group-economy a function which can be likened to that of the central nervous system in animal organisms. Another metaphor is suggested by Tarde: "Political authority in a nation is what the conscious and personal will is in the human individual. Will means either removing the brakes from the most powerful desire, or choosing between desires in conflict. Social life is made up of multiple currents which cross and interfere. Political life consists in directing these currents, whether by restraining or activating them."[73] It must not be supposed that the processes and interests within the group owe their tendency and direction to the dictates of the group authority. They spring from countless centers of private initiative and currents of habit on which

[72] For a good example of legislation among a primitive people, occasioned by a growing dearth of certain animals, see C. R. Moss, "Nabaloi Law and Ritual," in *University of California Publications in American Archaeology and Ethnology*, vol. 15, p. 237. For a general treatment of primitive legislation, see Hartland, *Primitive Law*, pp. 200 ff.

[73] Quoted from *Les Transformations du Pouvoir*, in A. Matagrin, *La Psychologie sociale de Gabriel Tarde* (Paris, 1910), p. 252.

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the group authority from time to time acts. Most of what happens within a society results from other than central direction—from the undirected acts of individuals and from their incalculable reactions on other individuals. Sometimes the social result is formidable, as when a custom is set up and the power of social habit is drawn into play to give momentum to certain types of interests. Such a custom may bring to its assistance the action of government to eliminate obstacles which oppose its extension; or, on the other hand, government may interpose to check it in behalf of interests and processes which it threatens with destruction. Government, like the human will, is motivated by the very forces which it governs; its function is only to arrange them in a more orderly pattern—one which involves less friction and fewer frustrations than they might assume if unorganized and uncoördinated.

VI. THE NATURE OF POLITICAL AUTHORITY

The interactions between various agencies of social control within a group are multiple and continual. Custom establishes interests and processes which authority exerts itself to safeguard. The effectiveness of authority depends largely on the establishment of a custom of obedience to its decisions. Authority initiates and stimulates practices which in time become customs. Habits of customary coöperation enhance feelings of fellowship and a sense of community among members of the group, which lead to the voluntary adjustment of many differences, and to a willingness to submit even strongly felt interests to authoritative decision. The presence and activity of an organ of authority strengthens this feeling of community by "heading it up" into a center of loyalty and a mouthpiece of expression. Custom, voluntary adjustment, and authority alike make possible, and are made possible by, this fellow-feeling among the group members, which is a reflection of manifold individual interests implicated in established processes of group-life. It thus seems futile to ask which of the various factors of group-order is prior. All grow as the others grow, react on one

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another, and so give its special character and meaning to the life of the group.

It is important, however, for understanding the nature of the interactions between the different control-agencies to note that in all but the simplest societies groups exist side by side, overlap, and combine into larger groups; and that, in reverse order, groups have a constant tendency to form smaller groups within their peripheries. Primitive man is ordinarily a member of a family, a village, a totem-group, and a tribe, and may also belong to a secret society, a club, and the war-following of a particular chief. A modern individual may be at once a member of a village, a county, a state, a business organization, a labor union or employers' association, a church, and a lodge, besides being a stockholder in numerous corporations. Within any one of these groups agencies of order of all types are usually at work—customs, voluntary adjustments, ethical ideas, authoritative leadership, and the rules of authoritative decision which we call laws. Each group has some of these agencies which are special to itself. A club or corporation, for example, has its own customs, its own governing body, its own rules and regulations.[74] Other controls run across and are common to a number of groups, as, for instance, the customs and ethical ideas of the wider society within which the smaller groups function. As we move from the smaller toward the wider groups, the group-processes directly involving any given individual tend to implicate his activities at fewer points, or at least to become more remote and less immediately visible. Thus an employee in a factory is directly implicated during the greater part of his waking hours in the processes of the factory. He is directly and immediately implicated in the processes of the whole nation only when he votes or serves in the army, and it requires an intellectual effort to grasp the connection of his own factory-processes with the remoter processes of national industry and commerce as a whole. This greater remoteness of group processes as the group becomes larger expresses itself ordinarily in

[74] See G. D. H. Cole, *Social Theory* (N. Y., 1920), pp. 40, 128.

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greater looseness of organization of the larger groups. Their customs are less closely knit, their common ethical ideas are more vague, the sense of fellowship among their members is less strong. The result is that, within a wider group, adjustments which have to be made between the component groups or their members are often relegated to the operation of purely voluntary agency. If, however, the processes of such a wider group become, for one reason or another, more closely knit and more important to the special processes of the smaller groups, and so to the interests of individuals, the time may come when the need will be definitely felt for some more reliable and effective method of adjustment. New interests in the unity of a wider group than has yet been organized by custom grow up and create a basis for authority, and an atmosphere ripe for its reception.[75] Thus from time to time the unit-area of authoritative control enlarges; authority is established and accepted in a wider group than any in which it was hitherto operative. Villages become organized into tribes, tribes into principalities, principalities into kingdoms. Always beyond the limits of the community governed by authority there exists a more shadowy community whose processes are not yet clearly enough understood in terms of individual interest to sustain authoritative control. Such a community was Hellas when authority was confined within the city state, another was medieval Christendom, and still another is the economic and cultural world-community of modern times.

[75] Simmel has pointed out the greater necessity for specialized organs of authority in larger than in smaller groups. "Small groups are characterized by the fact that they require a larger participation on the part of individual members. . . . . Large groups are forced to build special structures to take over the function which the immediate reciprocity between elements fulfills in small circles. The social-unity can no longer be produced and preserved by the immediate relationships between individuals, and the large group must therefore build special organs in which the reciprocal activities and relationships of its elements can crystallize," N. J. Spykman, *The Social Theory of Georg Simmel* (Chicago, 1925), pp. 136–137. Therefore, in a large group, custom, voluntary adjustment, and informal leadership cannot produce order without authority in the way which is possible in small groups.

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There is no more important aspect of the growth of institutions than this extension of the principle of authoritative control from smaller to wider groups and areas. Sometimes it comes about voluntarily through federation or voluntary annexation; more often it has come forcibly through conquest.[76] The economic and cultural unity of the eastern Mediterranean basin at the end of the fourth century B.C. had, for example, developed processes for the smooth functioning of which the existence of a common authority offered distinct advantages, —advantages which came to be recognized, once such authority was brought into existence. To bring it into existence required, however, the conquests of Alexander and the forcible extension of Roman power. As authority thus follows in the wake of a wider linking up of interests into a new and broader community, so its establishment tends to knit such a community together by new bonds of interest, generates sentiments of common feeling and common destiny which give to the group a new stability of organization and outline, and thus serves to convert loosely organized processes functioning through voluntary adjustment into more secure and permanent patterns.

The establishment of authoritative control over a wider group leaves the principle of authority still operative within the smaller component groups. Authoritative decisions and adjustments are still made in the family, the village, the club, after a center and organ of authority has been set up in the tribe or nation. Within their own groups these minor authorities still settle disputes, initiate group action, modify and remould the processes and customs of the group. Their relations with one another still find adjustment largely through voluntary action or by the growth and operation of custom. The only difference is that, over and above such informal agencies of adjustment, there is now available between the groups, or between individuals belonging to different groups, the additional instrumentality of authoritative decision. The higher authority belonging

[76] See the brilliant chapter, "The Building of Empire," in a brilliant book MacIver, *The Modern State* (Oxford, 1926), pp. 50–60.

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to the wider group no more supersedes the action of the smaller centers of authority than the activity of the latter supersedes, within their own spheres, the operation of custom and voluntary adjustment. The higher authority is called into play only to adjust particular conflicts, to effect special modifications of processes, in the same way that authority within a narrower group intervenes only to accomplish results which lie beyond the power of custom and voluntary adjustment. In one important respect, however, the position of the local centers of authority is altered by the establishment of a center of wider authority—the latter must, in the event of conflict, be supreme. This follows from the nature of authority as a final organ of adjustment in the group within which it operates. If it is to perform this function in a group comprising other groups, each having an authoritative organ of its own, it must be in a position to effect adjustments between the action of these minor organs whenever such action causes conflicts which endanger the processes of the wider group.

Authority vested with this kind of supremacy over all groups and individuals within a particular area is commonly called "political." Political authority itself may be, and in a complex society usually is, organized on a hierarchical principle, i.e., distributed in local centers, subject to various higher centers, which in turn are subject to a supreme, or ultimate, respository of such authority. The problem of the relation between these different centers of political authority presents many of the same elements as the problem of the relation between political and other authorities. Not infrequently the relations between any two organs of authority is purely voluntary. Such relations may be reduced to a measure of order either by spontaneous subsidence into customary patterns or by deliberate reduction to the terms of a contract. So long, however, as neither one of the two authorities is recognized by the other as competent to interpret or readjust such relations, and so long as there is no superior authority which both recognize as having such competence, it cannot be said that political relations exist

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between the two. Thus if the relation of one political authority to a supposedly superior authority rests altogether on custom or a contract which the former is itself free to interpret, the former is really "independent."[77] Similarly, if an economic or social group is free to interpret its relations to the political authority of the community of which it forms a part, it stands in fact outside the politically organized community, and forms, as we say, "a state within a state."

The competence of political authority to determine the relations between the groups and individuals subject to it thus rests in the last analysis on its competence to determine its own relations to them. Its decision of a dispute is not properly authoritative—it is merely mediatory and informal—if neither or both parties to the dispute are in a position to say whether or not it is competent to exercise jurisdiction, i.e., if its jurisdiction depends upon their volition, as applied to the particular dispute in question. To this extent, one of the elements of authority in the political sense is always competence to determine its own competence.[78] On no other terms can it discharge the function which it exists to discharge. This, of course, does not mean that it must, or will, always determine cases of doubt in its own favor. The power to assume carries with it the power to refuse jurisdiction, and one of the things which can fairly be expected of government is that it will allow maladjustments within the community to work out their own solution where a solution seems likely to result from voluntary action or from the gradual adaptation of interests to one another. In a socially healthy community, many of the most important conflicts of interests will solve themselves in these informal ways. Such solutions, where possible, have an advantage over authoritative adjustments in that they result directly from the free action of

[77] See the chapter, "The Nature of the Composite State," in Willoughby, *The Nature of the State* (N. Y., 1911), pp. 232–275.

[78] For the so-called theory of "Kompetenz-Kompetenz," see Merriam, *History of the Theory of Sovereignty Since Rousseau* (N. Y., 1900), pp. 109–196; Willoughby, *op. cit.*, pp. 192 ff.; *American Political Science Review*, vol. 12, pp. 199–200.

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the parties whose conduct they limit, and are therefore accepted on their merits, and on the basis of the interests directly involved in controversy, rather than from the indirect and ancillary interest of respect for authority. An important element of the art of governing is to predict successfully whether such voluntary and natural adjustments will occur.[78a] If they seem unlikely, government must exercise its discretion to determine whether or not its interference is desirable to maintain or further important group processes,[79] and what results are to be expected from such interference. Governmental action alone cannot save a group from disruption or stagnation; as has already been pointed out in another connection, it cannot overcome an adverse tide of events. What it can do is to lend effectiveness and strength to forces within a community which are moving in one direction rather than another. Its action to accomplish its objective must be supported by interests within the group having a strength of their own. On the other hand, much that government does in matters relatively unimportant or obscure serves to affect the play of forces which are too strong for it to contend with openly.

This consideration raises the important question of the relation of political authority to the use of force as a sanction. The elimination of private force between individuals and between subordinate groups as a means of furthering their interests was the earliest, and must always remain the chief, object of governmental intervention in the adjustment of interest-conflicts. There are times when such private resort to force can be prevented only by the actual or threatened use of greater force. Therefore the right to use force is clearly a necessary attribute of governmental power if it is to discharge its task.

[78a] More and more, governmental intervention is taking the form of stimulating and guiding voluntary adjustment, rather than that of imposing authoritative standards.

[79] On the other hand, it is not proper to assume, as many writers do, that the use of state authority represents a pathological condition. E.g., Jung, *op. cit.*, *supra* note 59, p. 98. Resort to authority is as inevitable a social phenomenon as voluntary adjustment.

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There is a tendency in present thought to under-estimate the effectiveness of force when used with prudence and intelligence. Because force has often been employed by government in support of interests which in retrospect have not commended themselves to progressive thought, and because it is obviously preferable that governmental decisions should be accepted voluntarily by those whom they affect, men are sometimes tempted to carry the argument further and deny that force can ever be effective for accomplishing the purpose for which it is employed. It is true that a direct effort by government to eradicate by force deeply rooted practices or interests, or to compass by force large and ambitious designs, almost always creates more conflicts than it resolves. But this does not mean that force applied adroitly at critical points with sufficient tact and persistence may not result in undermining, and ultimately eliminating, practices which government wisely or unwisely desires to overthrow. It is impossible, for example, to survey the history of the Middle Ages without recognizing that many practices and customs were crushed out largely, although of course not exclusively, by the military power of government.[80] The view seems sometimes to be taken that because these alterations were accomplished by force they must have been unfortunate.[81] No such judgment is necessary. The innovations in question eliminated the irregular resort to private force on an enormous scale, and released and coöperated with economic and cultural interests which were making for the organization of social processes over wider areas than before. Had it been possible to achieve these results without force, the use of it could fairly be condemned; but there is no reason to suppose such a possibility.

Control by political authority requires that force shall be used exclusively by the organ of authority or by agencies and persons

[80] Vinogradoff notes that the establishment of the supremacy of the "common law" over local customs in England "represents the juridical influence of the military class." *Custom and Right*, p. 30. See also Maine, *Early Law and Custom*, p. 186.

[81] Salt, "The Local Ambit of a Custom," *Cambridge Legal Essays* (1926), p. 282.

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employing it with the permission of authority. In this sense, the right to use, or license the use of, force becomes a distinguishing mark between organs of political authority and all other agencies and individuals. This obviously does not mean, as is sometimes supposed, that political authority rests on a basis of force.[82] It rests on obedience, whether produced by reverence, habit, rational conviction, or the fear of compulsory sanctions. That it cannot be said to rest ultimately on force appears from the fact that the use of force against recalcitrant individuals will not be effective unless acquiesced in, and if need be supported, by the preponderance of the impartial elements in the community not directly concerned with the controversy. Only in extremely rare instances can such acquiescence and support be procured by terrorization of the whole community. Where such a condition prevails, as in the military government of a conquered province, or in the great "tax-gathering empires" of antiquity and the Orient, the result is not a typical manifestation of political life, although it may in some instances be a stage toward development of such life. Seeley has termed these abnormal political structures "inorganic states,"[83] to emphasize the normal relation of government to the community as organic, in the sense of reciprocal, i.e., to indicate that government normally enlists obedience by deriving its purposes, and the standards which determine its judgments, from tendencies at work within the community, and not by forcefully imposing external and alien standards on an inert and unwilling group.

If government, then, is to make its proper contribution to social order, it must so shape its acts that they can be counted on to secure the willing support of a sufficient part of the community to make them effective without relying exclusively or

[82] The matter has never been better put than by Professor MacIver: "Coercive power is the criterion of the state, but not its essence." *Op cit., supra* note 76, p. 223. "It is true that there is no state where there is no overruling force. This is the *differentia* between the state and all other associations. There is no state where other associations arrogate to themselves the exercise of compulsion. But the exercise of force does not make a state." *Ibid.*, p. 230.

[83] *Introduction to Political Science* (London, 1911), pp. 72–76.

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principally on the sanction of force. For this reason, in the case of all its important acts it is desirable that it should have means of discovering in advance with some degree of certainty whether or not they will be acceptable to the community. To provide this opportunity seems to have been the chief function of those primitive assemblies of the tribe, or at least of the tribal warriors, which lie at the beginning of "popular" participation in government, and which enabled the tribal leadership to discover whether or not their measures would meet with opposition.[84] The primitive assembly was not a voting or enacting organ. It was a more or less informal body of onlookers in whose presence the processes of government went on in order that they might be subject to the check of public disapproval. At a later stage of political development, when government had extended over a wider area, representative assemblies were set up, primarily for a different purpose—to enable the permanent organs of government to keep in touch with different elements and sections of the community, and become informed, not only of their opinions, but also of grievances and conflicts requiring adjustment.[85]

In these ways contact was maintained between government and the community, which in time resulted in the formal infusion of what we speak of as a "popular" element into the governmental mechanism itself. The assembly, primary in the one case, representative in the other, came to be entitled to

[84] For the limitation of the power of the early Greek assemblies to informal approval or disapproval, see Halliday, *Growth of the City-State*, p. 73. For a general discussion of early assemblies, Botsford, *The Roman Assemblies*, pp. 168–171. At p. 171 Botsford cites instances where the king acted in spite of disapproval by the assembly. In historic times the Spartan assembly expressed its will by shouting and not by vote. Thucydides, I., 87. So the Florentine *parlamento* in the fifteenth century. *English Historical Review*, vol. 42, p. 641. It is sometimes thought that the voting of a law by the early Roman assembly was merely the assumption by the people of an obligation to obey it. "The citizens bound themselves to the acceptance of the proposition on an oral promise." Botsford, *op. cit.*, p. 179.

[85] G. B. Adams, *Constitutional History of England* (N. Y., 1921), pp. 168 ff; A. F. Pollard, *Evolution of Parliament* (2nd ed., London, 1926), pp. 36–60.

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perform some of the functions of government, and to contribute directly to making some of its more important decisions. Samples or representatives of different interests in the community were incorporated into the governing organ, in order that its decisions might represent a direct and immediate voluntary adjustment of these interests within the governing body. The theory underlying the whole elaborate organization of modern representative government is that every source of opposition to a proposed governmental act shall have an opportunity to voice its opposition before the act is decided on, and shall, furthermore, be in a position to exert against the adoption of the act an influence in proportion to its strength. This objective can never be attained with theoretical perfection. Difficulties of apportionment, difficulties due to the multiplicity of issues at elections, difficulties in finding a standard to measure the weight of respective interests, all make the result hardly better than a crude approximation. But no matter how perfect the apparatus might be for making governmental action a transcript of the relative strength of interests in the community, the fact would remain that in every controversy the decision must go against one of the parties—that, however majorities are measured, there will always be a majority and a minority. In other words, on no disputed point can government act without opposing the preferences of some of its subjects.

It may be that some of these preferences are so deep-seated, and that the action proposed to be taken in opposition to them is so relatively unimportant for maintaining vital group processes, that government would do well to refrain from overriding them. Whether these special conditions exist can, however, be determined only by government itself, as when, for example, it exempts religious objectors from compulsory military service. There is simply no other organ available to make the decision. So-called public opinion, which is sometimes appealed to, always speaks with a divided voice, and can be made to answer whatever the party appealing to it desires it to answer. If government, therefore, acting through its established forms, decides

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against the preference of a minority, there can properly be no claim of governmental usurpation. The mere existence of a dissentient minority cannot be regarded as establishing a necessary bar to governmental action, since otherwise it would be impossible for government to act in practically any case in which its action is valuable. Accordingly, in the ordinary case, as where vaccination is made compulsory against the religious scruples of a strong minority, no question is raised concerning the propriety of government's insisting on obedience by the minority.

In order to protect government from the danger of arousing the antagonism of a minority powerful enough to require greater use of governmental force than is compatible with healthy political processes, it is sometimes wisely provided that governmental action shall not be taken unless assented to by more than a simple majority. Even when this safeguard has been complied with, however, there are instances where a minority remains permanently dissatisfied.[86] To such a minority three possible courses are open: (1) to seek by persuasion and agitation to induce the indifferent or impartial elements in the community to join with it in an effort to secure a reversal of the offensive governmental action through the established governmental mechanism; (2) when the interest invaded is felt with sufficient strength, to seek peaceably or forcibly to withdraw from the jurisdiction of the offending government and set up a new political organization; or to seek to overturn by violent means the existing government and substitute in its place one which will respect the interest in question; (3) to pursue a course of persistent and concerted disobedience to the objectionable governmental ruling, and in this way seek to coerce government into a reversal of the ruling, or an abandonment of the attempt to apply it.

The last of these alternatives is at present receiving widespread discussion in connection with the National Prohibition

[86] See article by Dom Luigi Sturzo, "Right of Resistance to the State," *Contemporary Review* (Sept., 1928), vol. 134, pp. 312 ff.

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Act. Our only concern with it relates to its bearing and effect on the function of government as an agency of social control. Such control, like all human contrivances, never functions perfectly according to its theoretical pattern—it only approximates to the pattern. There have always been instances where laws have been in large measure obeyed by the community, but disobeyed by certain elements with the connivance of government, because the attempt to enforce them against such dissentients by physical compulsion would involve disturbances which would place too great a strain on the unity of the body politic. Such a condition is not unnatural in the case of new laws whose adoption has been accompanied by controversy, and to which it may require time for the community to adjust itself. As this adjustment occurs, the opposition normally dies down, the instances of disobedience become fewer, and ultimately the law causes no more infractions than can be safely dealt with by the application of compulsory sanctions. Again, in the case of archaic laws arising out of a condition of society which has passed away, government, without a formal repeal, may allow violations to go unpunished. The disobedience involved in these instances represents only the inevitable maladjustments incidental to the operation of any institution.

On the other hand, a condition which may be described as truly pathological exists whenever the opposition of a minority to a recent law increases in stubbornness, and government allows such opposition to paralyze its policy of enforcement. Such a condition indicates an abnormal attitude on the part of government as well as on that of the community. If government disclaims responsibility for carrying into effect the policies it has adopted, it is likely to adopt policies recklessly, and thus court further disobedience and bring itself into increasing disrepute. If an element in the community persistently and permanently places itself in opposition to government, it breaks down the psychological attitudes on which the effectiveness of government as an agency of social control depends. The inevitable result of this state of affairs is that government more and more comes

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to be obeyed only by those who lack the force to resist it. Its authority must consequently rest more and more on the sanction of force, and it degenerates into an unequal and arbitrary despotism, enforcing against some of its subjects rules which it is too timid to apply to others. This attitude on the part of government tends to develop whenever government rules over a community in which important elements are not willing to accept its decisions merely because they are authoritative—in which there is no general will, in the sense of common willingness on the part of all groups and individuals who can make their will effective, to acquiesce in the decisions of the community organ of decision.[87] Political authority can function only in an atmosphere where such a general will prevails. In this sense it is not inaccurate to describe political society as resting ultimately upon agreement—upon a common pact, voluntarily recognized and observed, to abide by the conditions essential to the existence of political order.

[87] Lowell, *Public Opinion and Popular Government*, pp. 8–15.

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RECENT CHANGES IN THE LOCAL GOVERNMENT OF ENGLAND AND WALES

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The purpose of this article is to describe the principal provisions of the Local Government Act recently passed by the Parliament of Great Britain, and to give some account of the forces behind the changes, without in any way touching on the controversies of political parties. The hand and brain of man have speeded up life; social conditions change ever more rapidly, and social institutions must change with them, those of government included, though some seem to believe that they are as the rocks of the ages. The Local Government Act contains 138 sections and 12 schedules, and there is room in this paper for only the more important of its provisions.

There has been in Britain for many years a steady stream of discussion, indeed at times floods, on needed changes in the structure of local government. Minds were prepared, therefore, for reforms, even if some people had almost come to the conclusion that the obstacles would prevent more than proposals. Whatever the differences of political parties, there has been a current of continuity in the development of local government throughout the big changes of the last century. Political wind and weather may have given a twist to a branch here and there, but the main outline of the old tree has been fixed by deeper causes; the big changes have been produced by underlying social conditions, independent of party; and the Local Government Act, in most of its provisions, will be found to be in line with this continuity, whatever the conflicting views on matters of detail.

I. ADMINISTRATION OF POOR RELIEF

During the past century there has been a steady consolidation of local government authorities. Instead of the old *ad hoc*

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authorities, each constituted for a specific service or set of services, functions have been concentrated more and more in one authority for each district, a process of "rationalization" adopted long before the blessed word became the accepted means of salvation in industry. The last big previous step in consolidation was effected in 1902 when the work of elementary education, hitherto under special local bodies, the old school boards, was placed in the hands of county councils and the larger urban authorities.

The one important sphere of local government which remained isolated, revolving in its own orbit, was that of poor law relief. A comprehensive inquiry into the poor law had been made, and changes recommended, as far back as 1909, but no alterations of structure had been effected. An even deeper issue was raised than that of authorities. Proposals were put forward in certain quarters for what came to be known as "the break-up of the poor law." The root principle of the poor law, a principle born of grim experiences in the last part of the eighteenth century and the early part of the nineteenth, was that relief was to be afforded only to destitute persons, and to be afforded under such conditions as would not encourage those who should fend for themselves to look to the public purse for their maintenance —the principle of "less eligibility." In actual fact, this principle had long ceased to be applied, even in appearance, to the young or to the aged and the infirm.

Further, in the time since the poor law system had been established, in the 1830's, the general local authorities had undertaken, or had been entrusted with, many new social services, and it was contended that the old foundation of the poor law was antiquated. Education had become a public service and a public charge. The welfare of mothers and infants was increasingly supervised. A great deal was being done to combat sickness, as in the case of tuberculosis, although the general provision of hospitals, for instance, has not become public service, nearly all the general hospitals being still voluntary. But even in this matter it was urged, with substance, that some of the hospitals maintained by the poor law authorities had in fact

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become in large part general hospitals, not places reserved for the "poor" in any strict sense. In addition, old age pensions (recently extended) had been provided by the state, and rational compulsory schemes of insurance against sickness and unemployment had been instituted.

The special poor law authorities—so it was contended by these reformers—had become only a survival, and the various services which were rendered by them should be handed over to the general local authorities (except that measures for dealing with the able-bodied unemployed should be undertaken by the state); and these local authorities, it was further contended, should render services to persons in need according to the particular need, so that, for instance, if a man required hospital treatment and could not provide it for himself or obtain it at a voluntary institution, the health committee of the local authority should come to his aid, or, if a child lacked maintenance, because its parents either were dead or were in poverty, the welfare of the child should become a case for the education committee.

It is well to note the social philosophy underlying the systems. In the one case, that of the poor law system of 1834, it is that of a stern and unbending individualism—that persons should fend for themselves, should make their own arrangements for the needs and emergencies of life, and that the state should step in, either directly or through local bodies, only in the last resort, and even then under strict safeguards. In the other case, that of "the break-up of the poor law," it is that the state should undertake to provide, as part of its business for the community, a number of essential services. Pushed to extremes, it might lead to socialism, but many of those who have supported it would hotly deny that it would have any such consummation.

It would be a mistake, however, to attribute changes in this, or indeed in any other social direction, solely, or even largely, to doctrine. Doctrine is often but the giving of a name or a system to forces already in play. Feeling is the general force behind reforms. The tide of human sentiment, the feeling often of individual helplessness before the industrial juggernaut, the

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sense of social solidarity, of the dependence one on another, the growing complexity of life and of its services—all these, even more than mere doctrinal aims of social organization, have played their part in producing changes.

What the Local Government Act does in the matters to which I have referred may be summarized briefly as follows:

1. Boards of guardians (the special poor law authorities) are abolished. Their work is handed over to the larger local authorities, the county councils and the county borough councils. Some measure of the change is afforded by the number of authorities of the various classes in the country; there are 625 boards of guardians, but only 62 county councils and 83 county borough councils.

2. These councils are required to appoint a special committee, the public assistance committee, for the transferred functions; with the qualification, however, that where any transferred function is similar to work now done by a council under its general powers (such as education, maternity and child welfare, treatment of tuberculosis), the council is authorized to arrange that the function shall be carried out under these general powers (not simply as a poor law function) by the appropriate committee of the council. That is, "the break-up of the poor law" is rendered possible to a large extent, but it is left to each council to decide how far it will go. The government stated that its intention was that the councils should make use of these powers, but that it was not advisable to place a definite obligation upon them, because when and to what extent proper use could be made of the powers depended on the facilities, in particular institutions, at the disposal of each council.

3. In the eyes of many persons, one of the great drawbacks of large areas of government is that they may weaken democracy; that they may sensibly reduce the effective opportunities of self-government available to the ordinary citizen; further, that they may open the door to government by officials, to bureaucracy, the awful bugbear of the British mind! The act provides for the appointment of "guardians committees" to local areas within each county. These will be subordinate committees

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of the public assistance committee for the administration of relief. A significant feature about them is that they bring the local councils into touch with the administration of public assistance. For each committee is to include persons nominated by the councils of the towns and rural districts within the area of the committee. It is also to contain the members of the county council elected for divisions within the area of the committee and, in addition, other persons appointed by the county council who need not be members of the council, but not to a total of more than one-third of the members of the committee. It is intended that advantage shall be taken of this latter provision to appoint persons of experience.

4. Each county and county borough council must formulate a scheme by which it proposes to carry out the new functions, and this scheme is subject to the approval of the minister of health.

II. REDISTRIBUTION OF OTHER ACTIVITIES

Another tendency in English local government during the past hundred years has been toward the enlargement of areas, for administration and for charges. In early days of the nineteenth century, the parish was the usual unit of charge and, to a large extent, of administration, including poor relief and roads. As population grew and transport advanced and ties between areas became closer, the inconvenience and inequity of the parochial basis became more and more obvious. It was superseded for the poor law by the unions, each with its board of guardians; for roads, by the increasing number of areas with special urban government, and, in rural areas, alternately by the rural district councils. The parish was superseded as the area not only of administration but also of charge (the area over which the charge is levied equally according to the taxable basis). In the case of roads, the extension of the unit went further, because the main roads, the ways of principal traffic, were placed under the county authority and made a county charge. Contributions were also made by the state toward roads, but of this I shall write later.

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Since the date of these last changes, the world had undergone another transformation. The motor vehicle had arrived. Distances had been greatly shortened. Population had grown. Industrialism had advanced. The services and burdens of local authorities had become much heavier. More and better roads had to be provided. Numerous new social services, undreamt of even by our fathers, had been undertaken. The greatly differing weights of local burdens loomed large.

Not least important was the fact, common to industrial countries, of the concentration of industry, especially of the basic industries like coal and iron, with corresponding concentrations of population, mostly of the working classes. This same massing of persons of small means also occurs in districts within, or near, the borders of the very large towns (or cities; in Britain even the large urban communities are still called towns; "city" is a special designation applied only to a few of the towns).

A local community of this kind is on too narrow a basis for assured stability, if it has to stand entirely on its own foundations. Its means may be relatively scanty, so that the many demands of modern life may necessitate heavy taxation, if they have to be borne unaided. On top of this weight, unemployment may at times fall with crushing force upon an industrial community. The consequence is the distressed or necessitous area.

This, in bare outline, is a problem with which British statesmen have been confronted for many years, a problem sorely intensified by the post-war severities of serious unemployment, monetary depreciation, and heavier taxation.

The Local Government Act provides for wider areas of charge. For relief of all kinds, it spreads the burden over the whole county (or county borough in the case of the largest towns); in an area of this size there will usually be broad shoulders of rich and poor districts, better able to bear the burden. This may not be true in the same measure for the county boroughs as for the counties, but there were historical reasons why it was not practicable to merge even the smaller of these county boroughs in the county.

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In the case of roads also, the burden of construction and maintenance, which was pressing with special weight on some rural districts, will become a county charge, with this exception, that in towns the local roads (as distinct from roads of through traffic) will remain a charge on the town; county boroughs are excepted. In rural areas, all public roads of every description will become county roads, under the county council.

I have mentioned that, in the transfer of poor relief from the smaller area of the union to the larger area of the county, there were doubts in some quarters whether democracy would not be reduced and bureaucracy increased, and that this fear was allayed to some extent by providing for the appointment of local guardians committees. This same dislike of taking from the smaller authorities and giving to the larger appeared with even more vigor in the matter of roads, because the smaller authorities continued to function for other purposes. The act contains a number of provisions to conciliate such fears.

In the first place, every urban authority with a population of over 20,000 persons can claim to carry out the road work in its area for the county council, with the exception of special arterial roads. This follows a practice which has been in force since county councils were first established in 1888. The cost remains a county charge. In the second place, county councils are empowered to delegate road work also to the smaller urban authorities and to the rural district councils. But this is at the discretion of each county council; there is no compulsion, except to this extent: it will be recollected that county councils become responsible for all public roads in rural districts, the local as well as the through roads (the unclassified as well as the classified roads, as it is phrased); if a county council refuses to delegate to a rural district council the functions on local roads, the latter can appeal to the minister of transport, and it will be for the county council to show cause for the refusal, on the ground of the economy and efficiency of highway administration throughout the county or of the special circumstances of the district. In the case of the through, or "classified," roads, the discretion of the county council whether or not to delegate the work is absolute.

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New provisions are made also in the matter of town planning —city planning, as it is called in the United States. Our schemes of town planning relate mainly, not to already built areas, but to areas where development is to be expected.

Hitherto, county councils have not had any town planning powers. This has not been free from difficulty, especially because, outside the county boroughs, the principal roads were managed by the county councils. Now that the road powers of county councils are to be so greatly enlarged, it has become essential that they should exercise town planning powers. But a town planning scheme should be a coördinated whole. Unity of design is one of its principal virtues, as against spasmodic development where there is no general plan. How secure is this unity, where there are two authorities, county council and county district council, exercising powers within the same area?

The act attempts to resolve the difficulty by affording means by which schemes shall be prepared jointly by the county council and the county district council, or by a number of them acting together—and joint regional committees are now general throughout the country, although most of them are still advisory. The town planning scheme, when made, may contain provisions to secure that the responsibility for regulating or carrying out, as the case may be, the several matters in the scheme is appropriately distributed between the several authorities. Every scheme is subject to the approval of the minister of health.

It may be mentioned also that the act makes changes in quite another sphere than those with which I have been dealing, namely, in the registration of births, deaths, and marriages, again by transferring functions to the largest authorities. This work has hitherto been done by officers appointed by the boards of guardians. It had no connection with the main functions of these boards, but had been allotted to them because of the historical accident that, at the time when the national system of registration was instituted (in 1836), the boards of guardians were the only local bodies of a representative character universal throughout the country. The act transfers the functions of the

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boards of guardians in this matter to the county councils and the county borough councils, so far as the local functions are concerned. Additional changes are made for the efficiency and convenience of the service.

III. PROVISION FOR REVIEW OF LOCAL GOVERNMENT AREAS

Still another part of the act aims at improving the areas of the various authorities within the county (town councils, urban district councils, and rural district councils). Many of the urban areas were constituted separate units of local government in a somewhat haphazard fashion very many years ago. The requirements of local government have been transformed in the last fifty years. There has not been any systematic revision of local government areas. Individual alterations have been made from time to time—a large number of them—but there has been no general review. There is no gainsaying, therefore, that some of these areas are not well adapted to modern needs. That was the conclusion reached by the royal commission which has been considering the subject, and in a report which it issued last year it recommended a number of measures which have now been incorporated in the Local Government Act.

An obligation is placed upon each county council systematically to review the areas of the districts within its borders, that is, the areas of the town councils and the urban and rural district councils (but not county borough councils, which are wholly outside the ambit of the county councils). The councils are required to do this within three years, unless the time is specially extended, and to submit their proposals to the minister of health, with whom final decision rests; and he may confirm the proposals or reject them or modify them as he thinks right, after fully considering any representations which may be made to him. The object is to secure districts of sufficient size and financial strength to carry the weight of duties imposed, so far as this is possible. It may not always be possible, because of geographical and other difficulties. The county councils are enjoined freely to consult all interests before making their proposals.

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County councils may undertake later reviews, but an interval of at least ten years must elapse between any two reviews; frequent alteration of areas does not conduce to smooth government. There are provisions for individual alterations in the meantime, where required.

IV. IMPROVEMENT OF HEALTH SERVICES

There are other provisions designed to secure better service, especially in the smaller units of local government. There has long been a movement for the appointment as medical officers of health of men who give their whole time to the public service, though not necessarily in one appointment. A large number of the local authorities are too small themselves to employ a whole-time medical officer. In many cases a number of neighboring authorities have combined to appoint a whole-time official; but progress has not been as rapid as is desired.

The act places an obligation on each county council to prepare and to submit to the minister of health a scheme for employment by the councils throughout the county of medical officers who will devote their whole time to the public service. When necessary, this may be done either by combining a number of neighboring districts for the purpose or by arranging that the same man shall serve as medical officer to a district council or councils and also as an assistant medical officer to the county council. This latter plan has already been adopted in some cases, has proved satisfactory, and is much favored by many persons, because it has the advantage of bringing within the sphere of one doctor all the public health work of an area, whether it comes under the district council or the county council, and close liaison is thus maintained between the different activities of the councils.

Another sphere in which in the past it has not been easy, or even always possible, to overcome the handicaps of small or scattered authorities has been the provision of hospitals for the treatment of infectious diseases. The duty of providing the necessary hospitals lies with the sanitary authorities, i.e., the town and the urban district and rural district councils, but some powers have also been given to the county councils.

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A further duty is now placed on county councils—that of preparing and submitting to the minister of health a scheme so that sufficient hospital accommodation for infectious diseases shall be available for each district, again by combining districts for this purpose, or by arrangements under which the hospital of one authority (a neighboring large town, for instance) shall also be available for a neighboring small town or rural area, or by the provision of a hospital by the county council itself.

There are also provisions in the act designed to secure that all the public services for the welfare of children shall be brought under one authority, the object being to secure that the council which is responsible for elementary education, and therefore also the school medical service, shall, in addition, be responsible for maternity and child welfare, the notification of births, and the supervision of midwives.

V. DERATING OF INDUSTRY AND AGRICULTURE

The local taxation of England and Wales is on a narrow (though convenient) basis. It is levied almost wholly on real property. The annual value of each item of real property is ascertained, and this value, with some allowances, is the basis (the "rateable value") on which the local taxes (the "rates") are raised. Thus, if the effective rateable value be £1,000,000, and £750,000 had to be obtained in rates, the amount of the rate would be 15 shillings in the £—a little more in fact, to allow for losses, etc.

This system was first established in the days of Queen Elizabeth, when modern industrialism with its expensive buildings and plant had not been developed—at a time, too, when public charges were on a modest scale and when real property could be accepted as a moderately satisfactory index of means, although even then not an adequate criterion. It was indeed intended to include personal property, but practical difficulties defeated the attempt. Conditions became very different when factories and other industrial establishments multiplied many fold, and when public services, and corresponding public burdens, rose higher and higher, so that now

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there were mountains where formerly there were but hillocks. It came to be felt that some change should be made. But what change? Investigations, public and private, were many. But the harvest was not large—little beyond additional central grants and partial relief of agricultural land.

Proposals have been made that local authorities should be empowered to break new ground in local taxation. The possibilities of a local increment tax on land values have been canvassed, and also of a local income tax. For various reasons, neither has passed beyond the stage of discussion.

Another proposal has taken a different direction. It is based on a distinction between the groups of services rendered by local authorities: (1) those services which are of primary need and of primary benefit, for the district itself, such as water supply, sewerage, the collection and disposal of refuse, and numerous other services of this kind; and (2) those services which, while of benefit to the district, are of national importance and, indeed, a national need, such as education and, under modern conditions, police. The one class of services are called "beneficial"; the other, "onerous". Both groups are performed by the local authorities, but for the former the local area is a unit more or less complete, while for the latter it is not more than a unit in a larger whole, the state. The distinction between the services is not clear-cut, but it is there.

The proposal was that the local authorities should continue to bear without aid the cost of the beneficial services, but that the whole, or the greater part, of the cost of the onerous services should be borne by the state, administration being left to the local authorities with whatever supervision was necessary. Already the principle has been adopted in large measure, in the empirical fashion of the British people. Fifty per cent, broadly, of the cost of education and of police is now paid out of the national exchequer, and, out of the central road fund, the same proportion for Class I roads and a smaller proportion for Class II roads (proportions which are now to be increased). How to maintain local autonomy if the measure of grant is substantially larger, at any rate how to maintain it without that

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detailed inspection which might go far toward destroying it—that is a practical problem which weighs heavily with many persons of experience, quite apart from the theoretical merits or demerits of the proposal.

The Baldwin government chose a different course, one in line with that adopted first in 1896 and extended in 1923, when agricultural depression and the burden of local taxation led to the reduction of the burden on agricultural land, ultimately to one-fourth. It is worthy of note that the acts of 1896 and 1923 were temporary and were periodically renewed. The government considered that the pressure of local taxation bore with special unfairness on productive industries, because of the large outlay in various forms of real property which was a condition precedent to their activity, and because local taxation was in proportion to the outlay. There was not, it was felt, a fair distribution between different kinds of property. Social conditions had rendered real property an inadequate index of taxable wealth. Industry was penalized. Some of the basic industries, such as coal, iron, and steel, which required an exceptional amount of real property for production, were considered to be especially hard-hit by the system, and that at a time when depression pressed heavily upon them and post-war reconstruction had to be faced. Agriculture also was still needy and pressing for relief.

These were the contentions. Doubts were expressed by some whether it was not right to regard many of the local services as essential for industry and therefore properly included in its first cost; also whether, if a large measure of relief were given to industry, the interest of its local leaders in the efficiency and economy of local government might not be seriously weakened—and the rough and tumble of electioneering was already an obstacle to their coming forward to take their part in the local councils. In particular, objection was raised to relieving industries which were flourishing. Local authorities hesitated because they feared lest the increasing needs of growing population and rising social demands might not be paralleled by larger resources—in particular lest, as new factories and the

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like added to local services and local expenditure, these might bring burdens without corresponding revenue.

There was another argument on the other side for the proposals—for any reform intended to throw a larger share of local expenditure on state resources. In modern communities, taxation is more and more according to means. Its ideal expression is the income tax. By throwing a larger proportion of the local requirements on state funds, a larger measure could be obtained of taxation according to means, since national taxation was much more expressly based on this principle than was local taxation, and lent itself much more readily to it.

The government considered that the needs of the time and a more equitable spread of burdens could be obtained without any radical change in the system of local taxation. What it did was to remove from productive industries a large proportion of the local burden now cast upon them. In future, instead of paying local taxes on the full rateable value as now, they will pay only on one-fourth of this value (and this one-fourth will become the new rateable value for these industries). This relief is restricted to productive industry, so that, for instance, if in one concern there are premises and plant, some of which are for production and some for distribution, the reduction will be made only for the former. The relief is extended to railways, docks, and canals, but only on condition that it is passed on by way of reduced charges on freight traffic—in the case of railways, on specified agricultural, coal, and iron traffic.

Claims were made that any relief should be extended to distribution as well as to production. Both, it was argued, were necessary for production in its broadest sense. On the other side, it could be contended that, apart from the fact that it is upon productive industry, in the narrower sense, that post-war depression has fallen with force, the real property of distribution was usually small when compared with that of production—that, given productive and distributive businesses with about the same turnover and about the same profits, the necessary real property of the former would be likely to be much greater

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than that of the latter, and it is upon real property that local taxation is levied. Therefore, on merits, it was contended, distribution had nothing like the same case for relief as production.

Agriculture was treated specially, as it had been in the past. It was now relieved of the remaining fourth, so that in future rates will not be paid on agricultural land and buildings. Rates will continue to be paid on the farm house and on the cottages of agricultural workers.

VI. NEW RELATIONS OF NATIONAL AND LOCAL FINANCES

I have already stated that the money required to make good the loss from derating is to be provided from the national exchequer. A special tax was put on petrol to raise additional money, though it would be a mistake to regard this tax as in any way earmarked for the needs of local authorities. It is but one means of adding to the central pool fed by taxation, and it is from that pool that the local grants will be drawn. The monies for that pool are levied on a much wider basis, and more according to means, than would be possible for a local body.

There is nothing new in the collection by the state of monies for local authorities. It has already been done to some extent in this country. It is a common practice in European countries; for instance, the additional centimes in France and the additions which are now so much a source of controversy in Germany. There is a difference of principle between the case where (a) an addition for local purposes is made to a state tax and the addition is levied expressly on the locality, and that where (b) the sum provided for local purposes is levied equally over the whole country. The changes in the recent act follow the latter course. As the community becomes more closely threaded by strands of common interest, and local areas become less and less self-contained, increasing difficulties are likely to be met in levying strictly local taxation on an equitable basis, equitable between districts as well as between persons, so far as it is intended to raise money according to means.

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It would be much too early to say that these difficulties cannot be overcome, but no wholly satisfactory solution has yet been devised, apart from a state levy. How far state levy and collection are likely to endanger local autonomy (which, even apart from its own importance, is the admitted school of democracy) will depend in some measure upon the methods and conditions of distribution, and these I shall proceed to describe.

To preserve local autonomy is only one of the objects of the new method of distribution. It leaps much further in intention, and seeks to secure that income shall be more fairly divided between local authorities. The problem of the distribution of wealth presses on local authorities even as on citizens. Some of our districts have many times the wealth of others, judged by rateable value per head. As already mentioned, one of the most troublesome problems is that of the "distressed area," with low rateable value per head, large need for social services, and high rates. There has been persistent clamor for assistance. Something has been done, but, it has been felt, not enough.

One way out of the difficulty may be to merge the "distressed area" in a larger local government unit for all purposes. But local particularism may block the way; nor, indeed, is a solution by any means always possible along this line. Another mode of relief is to spread some of the local charges over larger areas; and, as already indicated, this is a course adopted in the new act for poor relief and for roads. But there is more.

Before describing the new scheme of distribution it is necessary to give some account of the grants which have hitherto been made by the state. Some of these, with a history of experiment behind them, are made on a basis which has no relation to the expenditure of the several local authorities. Others are made to each local authority as a percentage of its approved expenditure on specified services. The following figures of the expenditure of local authorities for the year 1926-27 will indicate the measure of these grants:

Total expenditure (excluding that out of loans, but including that on trading undertakings) . . £402 millions

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Total expenditure met out of rates and grants (the rest being met out of charges such as for water, electricity, and gas, income from property, etc.) ..... £246 millions
Met out of local taxation (rates) ..... £159 millions
Met out of grants ..... £ 87 millions

The new proposals do not change the grants made for education or for police, or the major portion of the grants made for roads. These will continue to be made on a percentage basis, generally fifty per cent of the net expenditure. Most of the other grants are to be merged in one pool with the money which has to be found by the state to make good the loss to local funds from derating. For the year 1928-29 (called the standard year), it is estimated in round figures that the loss from derating would have amounted to £24 millions and the grants to be discontinued to £16.5 millions, making £40.5 millions in all.

The discontinued grants include not only those hitherto made without reference to expenditure, but also those on a percentage basis for maternity and child welfare, treatment of tuberculosis and venereal diseases, the welfare of the blind, and the care of the mentally defective. These percentage grants amount to about £4 millions. There are also included certain of the grants, estimated at £3 millions, hitherto paid for maintenance of roads out of the road fund. The other grants amount to about £13.2 millions, and include about £4.7 millions in respect of the relief from rates already accorded to agriculture; though part of this total is already allocated to police and education, and the amount available for the pool will be £9.4 millions. This makes the total estimate of all discontinued grants the already mentioned figure of £16.5 millions.

The general exchequer contribution (the general pool of money to be distributed to local authorities) is to be made up of the loss from derating and from discontinued grants in the standard year, 1928-29, augmented by a special grant of new money. For each of the first three years, this new money will be a sum of £5 millions, part of it taken from the road fund. Toward the close of this time, Parliament will fix the amount anew for

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the succeeding four years, and thereafter for each period of five years. The part of the general exchequer contribution for loss from derating and from discontinued grants (estimated at £24 millions and £16.5 millions respectively) is stabilized. Any change in the total of state money will be by way of increasing (or diminishing, which is unlikely) the "new money." There is, however, this condition in the act, that the total general exchequer contribution is never to form a smaller proportion of the total expenditure of local authorities met out of rates and that contribution than it does when the scheme first comes into force.

The local authorities contended that the new money should be more, but the government considered that the sum was adequate. It will serve in part to meet increases of expenditure during the grant period. For the scheme of the act is that the amount of money to be distributed to each authority shall be fixed for periods of five years. The first two periods are exceptions, being three and four years respectively, partly because of some concessions made to local authorities during the progress of the bill, but also in order that the years of the revision of grant may follow immediately the years of census (which in future is to be taken every five, in place of every ten, years). It will be observed that the new scheme brings the country appreciably nearer the position where, out of the total expenditure of local authorities which has to be met from taxation of one kind or another, one-half comes from central funds and one-half from local.

It is in the matter of distribution that the act contains some of its most interesting provisions. An attempt is made to smooth down the inequalities which arise from the distribution of rateable value and of local necessities. Grants are divided according to need. For this purpose a formula of distribution has been devised. It is a little complicated, and it would take too much space to set it out in all of its details. Distribution is to be according to population, but population weighted by factors which are deemed to indicate the probable burden on the district of providing the local services and the need of

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help in bearing the burden. These factors are: (1) the taxable wealth of the district, measured by rateable value per head; (2) the proportion of children under five years of age to the total population of the area; (3) unemployment, measured by the proportion of unemployed insured men plus ten per cent of the unemployed insured women to the total population; and (4) for the counties (but not the county boroughs or London), density of population, measured by the population per mile of public roads, and so adjusted as to give weight to high and to low density.

The grants will be distributed according to the formula to each county council and county borough council. The county borough council will be the sole local authority for its district. In counties, however, there will also be county district councils, i.e., town councils, urban district councils, and rural district councils. The way in which the grant is divided between the county council and the county district councils is this. The amount to be allotted for each county is to be determined according to the formula. To each county district council will be paid a fixed sum per head of population, without any weighting. The difference will then be paid to the county council in aid of its expenditure. The individual ratepayer will, therefore, receive the benefit from the application of the formula in that part of his total rate (or tax) which represents his share of the payments for the requirements of his county council.

The fixed sums to be paid to the county district councils have been determined in this manner. The total part of the general exchequer contribution (the general grant pool) to be distributed to all county councils (London excepted) is divided by the population of the counties. One-half of the resultant amount is the uniform sum per head which is to be paid to the urban councils (town councils and urban district councils); the uniform sum is estimated at twelve shillings and six pence per head for the first period of the grant. For rural areas, some of the services which in an urban area would be done by, and at the charge of, the urban council, are performed by, and at the

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charge of, the county council. Therefore the amount of the grant per head to be paid to the rural district council has to be less than to an urban council. It has been fixed at one-fifth of the share of the urban council, i.e., an estimated uniform sum of two shillings and six pence per head of population.

The new dispensation will not be reached in one flight. The journey will be taken in stages, thus: (1) for each of the first seven years, seventy-five per cent of that part of the general exchequer contribution which is in place of the loss for derating and from discontinued grants (estimated at £40.5 millions) will be distributed in proportion to this loss for each district, as shown by the figures for the standard year 1928-29, the remainder of the general exchequer contribution being distributed on the formula; (2) for each of the next five years, the seventy-five per cent distributed according to loss will be reduced to fifty per cent; (3) for each of the following five years, the proportion will be reduced to twenty-five per cent; (4) afterwards, the whole is to be distributed on the formula.

The act contains a number of guarantees for the assurance of local authorities, some of them inserted after negotiations with the associations representative of the authorities, who were abundantly consulted. The following may be mentioned: (1) each county council and county borough council is guaranteed a gain of at least one shilling per head of population over and above its loss in rates and grants in the standard year; (2) each district is given a limited guarantee against a rate higher, by reason of the changes brought about by the scheme, than that in the standard year 1928-29; (3) as already stated, the total general exchequer contribution in any future year is not to be less, in proportion to the total net expenditure of local authorities from rates and the general exchequer contribution, than it is in the beginning; (4) it is expressly provided that if Parliament imposes new duties on local authorities the scheme is not intended to include any grants for those duties; and lastly, (5) the scheme is to be investigated before the end of seven years and a report made to Parliament on it. The system will have been only in partial operation during this

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period, but sufficient experience should have been gained to indicate how it is likely to work when in full operation.[1]

VII. GENERAL IMPORT OF THE NEW LAW

Any extensive reform of this kind was bound to encounter criticism—not mere party sharp-shooting, but genuine doubts. Many guardians had given years of devoted service to their boards, had become attached to them, and saw nothing but calamity in their passing. The general local authorities hesitated, fearing above all how their purses would ultimately fare, the more so because their previous experience with stabilized grants had not been happy. Percentage grants had for them at least this automatic virtue, that they were assured a grant for every pound of approved expenditure; and they expected that expenditure would go on growing. Further, under the pressure of social needs and persistent advocacy, in recent years Parliament had placed many new duties on local authorities, and, where these were distinctly of national importance, had definitely entered into partnership with the local authorities, paying a part of the cost. The fear of the local authorities that new services of this kind might be imposed, without any corresponding grant, was met, so far as it could be, in the act.

Another group of critics clung to the percentage system, not out of tenderness for the interests of local authorities, but because it was an excellent stimulus to local authorities to induce them to undertake and to develop services entrusted to them. They feared that, if this bait were removed, the slack local authorities would lag woefully behind. It is a criticism likely to weigh heavily with those whose interest is more in particular services, such as maternity and child welfare, than in the general work of local authorities and in their autonomy.

This observation raises the question of how the scheme affects the relations between the local authorities and the central departments of state, especially the ministry of health—relations

[1] It may be added that there are special adaptations for London, because of the exceptional conditions, with duties divided between the London County Council and the metropolitan borough councils.

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always intimate in Britain. One of the chief objections raised to the system of percentage grants has been that they tend toward detailed control of local affairs. Financial aid cannot but be bought at the price of some loss of local autonomy; the control may become national when pound is given for pound. Another, and to some minds more important, objection is that the system may tend to dull local initiative. Grants can be obtained only on approved expenditure; local authorities naturally look to the central department to say what is to be approved expenditure; local initiative may, in consequence, go to sleep. It has been said also that percentage grants, with their control of detail, tend to immerse the central departments in the smaller things, to make them lose sight of the wood for the trees, and that, relieved of this detail, they will tend to cultivate the larger issues of affairs. Much, manifestly, must depend, in judging the merits of percentage grants, on the need for firm central control of general policy and administration and for direct stimulation; and these needs may differ materially for different services.

A large measure of control is left under the new act, on paper, with the central department. First, there are provisions under which, if the local authority fails to carry out essential duties of public health, it may be superseded for those duties at the instance of the minister of health (who is, of course, subject to Parliament). These provisions do but reproduce in better form what was already contained in the law. Secondly, the minister is empowered to reduce the grant payable to a local authority if it fails to carry out essential health duties or if it is guilty of gross extravagance. If he uses this power in any case, however, he has to make a special report to Parliament.

Objection was raised in some quarters to the power to withhold grants by reason of extravagance, on the ground that it contravenes the principle that a local authority should be subject only to its own electors so long as it draws only on local rates. On the other hand, the total contribution of the state will in a measure depend upon the expenditure out of rates, and

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it is noteworthy that the power obtained, and in a few cases used, entirely to supersede a poor law authority by nominated commissioners for misuse of their functions is surrendered and reliance placed entirely on the powers contained in the new act.

Lest these references to penal action give a false impression, let me hasten to add that the general relations between the central departments and the local authorities are most cordial, that all recognize that they are partners in a common cause, and that the central departments appreciate that their principal task is to help the local authorities in the arduous duties placed upon them.

Such, in brief, are the changes wrought by the Local Government Act passed this year. It is at any rate a bold scheme, whatever be the differences of opinion on its merits. But there is nothing revolutionary about it. The act, in the main, continues the developments of the last hundred years, and some familiarity with that history is necessary for its proper understanding.

Consolidation of services; larger units of charge and of administration; larger contributions from the state toward local expenditure—these have all been enacted before and are now merely extended. The newest elements in the reforms are the relief from local taxation afforded to productive industry and the endeavor to distribute grants more in accordance with local needs; but, as to the former, some modification of local taxation has long been felt to be needed, though there have been, and still are, differences of opinion how best it may be effected; and as to the latter, some means of redressing inequalities have long been held desirable, though not hitherto attempted on a comprehensive scale.

The act makes big changes in the topography of local government, and it is not often that so many and great changes are effected in one measure. But the broad outlines of local government will remain much the same. The operation of the act will be watched with interest and care, not least by the associations of local authorities, who may be trusted to press with

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weight any claims which may emerge in their favor. The changing conditions of modern life, which now transform as much in a generation as formerly in a century, call for periodic adaptation. Without it, waste must ensue. At the same time, it is hard to say with assurance, in the complicated maze of modern conditions, what will be the lasting effect of reforms. A spirit of empiricism is required for efficient government; and that, of a certainty, is possessed by the British people in abundant measure.

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The Bearing of Myers v. United States upon the Independence of Federal Administrative Tribunals. The rapid development of administrative law during this century has meant a multiplication of administrative tribunals.[1] The functions of these bodies vary widely. Some have regulatory powers, others only fact-finding authority. The Interstate Commerce Commission may fix rates[2]; the Tariff Commission may only investigate differences in costs of production.[3]

In all such cases, however, there is fundamentally the same motivation behind their creation. The complexity, technicality, constant fluctuations, and expanding scope of the problems that confront Congress have compelled it to devolve some of its authority upon other bodies,[4] and in some cases to set up agencies for the collection of data as a basis for decision. These very same factors have made our traditional trial courts unsuitable agencies for the exercise of powers thus devolved,[5] and politically controlled bureaus unfit for the investigation of politically significant facts.[6] Congress, therefore, has set up specialized bodies, which are to be manned by experts in particular fields, supplied with elaborate means of research, and authorized to act upon the best obtainable information and opinion. The purpose is thus clearly to cause scientific methods and expert judgment to be brought to bear to the maximum extent possible.

[1] Among these are the Civil Service Commission, the Interstate Commerce Commission, the Federal Reserve Board, the Federal Trade Commission, the United States Shipping Board, the United States Tariff Commission, the Federal Power Commission, the Inland Waterways Corporation, and the Federal Radio Commission

[2] See U. S. Comp. St. (1918), §8563; *ibid.* (1925), §8563.

[3] See 42 Stat. at L. 858.

[4] Cf. James Hart, *Ordinance-Making Powers of the President*, 265–275.

[5] Because the ordinary trial judge and jury do not have the technical knowledge, and, since these courts have "general jurisdiction" and lack fact-finding staffs, they are not equipped to acquire such technical knowledge.

[6] For support of this statement, see *Hearings Before the Select Committee on Investigation of the Tariff Commission*, U. S. Senate, 69th Cong., 1st. Sess. (1926), espec. Pt. I, 66–67; Pt. III, 361; Pt. IV, 775–776. The tariff act of 1922 created a relationship between the President and the Commission which made it possible for him to regard it as a mere bureau. The results are set forth in the excellent public document cited.

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It is submitted that for this purpose to be carried out—for the duties of these tribunals to be performed under the influence of the "judicial habit of thought"[7]—it is essential that the members be guaranteed independence in the exercise of their personal judgment, uninfluenced by direct pressure from political superiors or special interests. And it is a matter of common experience that independence of tenure is a prerequisite of independence of judgment.[8]

It might be that this independence of tenure could be guaranteed by the development upon the part of the President of self-restraint in the exercise of legally permissible discretion. Examples of the ability of constitutional *mores* to mold to a dominant purpose the rules of constitutional law are scattered through the history of modern constitutional government.[9] In the case of certain commissions, notably the Interstate Commerce Commission, there appears to have been a minimum of political interference in the past. If this cannot be said

[7] W. A. Robson, *Justice and Administrative Law*, emphasizes the importance of the "judicial mind" in the exercise of quasi-judicial functions. See the present writer's review of Robson in this *Review*, vol. 22, p. 987. What is the judicial "habit of thought?" It seems to the writer that Mr. Robson speaks too glibly of "impartiality." Judicial officers are human beings who are not, and cannot become, entirely free from all opinions and prepossessions. Jurors are the only persons who possess this dubious virtue. The judicial habit of thought means rather a *conscious desire* to be "impartial" *according to one's lights*, an attitude of respect for expert opinion and cumulative experience, and a sense of detachment from the strife of conflicting interests. At its very best, it includes a willingness to reëxamine, upon occasion, one's own tacit assumptions, which takes us away from the "red tape" psychology of bureaucracy.

[8] Recognition of this common experience is seen in the English and American (federal) provisions for tenure of judges during good behavior, and in attempts on the part of Congress to limit the President's power of removal of officers and commissioners exercising quasi-judicial functions. For example, by 42 Stat. at L. 23, 24, Congress denied to the President all power to remove the comptroller-general. See L. Rogers, *The American Senate*, Appendix A, for other statutory provisions. No doubt some of these attempted restrictions were based on other motives.

[9] The Senate has in all save a few cases refrained from interfering with cabinet appointments. The French executive has not arbitrarily removed a judicial member of the *Conseil d'État* since 1879 (Sait, *Government and Politics of France*, 388). Bureau chiefs in several of our federal executive departments have a practical stability of tenure. See Macmahon, "Bureau Chiefs in the National Administration of the United States," in this *Review*, Aug. and Nov., 1926. Professor Robson assures us that in England political interference with quasi-judicial functions, even those entrusted to the ordinary departments, is a "bogey" (*Justice and Administrative Law*, 282–288). Presidents seem gener-

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of the Tariff Commission under Presidents Harding and Coolidge,[10] the fault lies primarily with Congress, which delegated final responsibility to the President in the matter of the flexible tariff,[11] and which imposed upon the Commission the duty of finding "facts" which are non-existent.[12] However this may be, in a matter so essential for the performance of the proper tasks of administrative tribunals in general, it seems evident that the safest course is to add the sanction of law to the guarantee by practice of independence of tenure. Specifically, this means that it is politically inexpedient to allow the President an arbitrary and illimitable power to remove at pleasure the members of these commissions.[13]

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ally to have respected the intent of Congress and to have refrained from overt interference with the Interstate Commerce Commission. These examples are taken more or less at random, but they show the importance of constitutional *mores* as at times a restraining influence in modern constitutional government.

[10] See *Hearings* cited in note 6 above.

[11] Cf. the wording of the tariff act of 1922 (42 Stat. at L. 858) with President Harding's letter to Mr. Culbertson (*Hearings*, Part III, 361) and President Coolidge's interview with Mr. Lewis (*Hearings*, Part IV, 775).

[12] See T. W. Page, *Making the Tariff in the United States*; also Taussig's article reprinted in the *Hearings* cited above, Part I, 30 ff.

[13] Through most of its history, to be sure, the federal government has been characterized by a centralized administration, with the President at the top as administrator-in-chief. The states in recent years have shown a marked tendency to imitate this feature. Those persons who have advocated enlargement of the governor's powers have held up the federal government as a model. But that government, under the new conditions of the twentieth century, has itself shown a tendency in the other direction, toward the creation of independent or semi-independent quasi-judicial, fact-finding, and even business, establishments. Examples, in order, are the Interstate Commerce Commission, the Tariff Commission, and the Shipping Board. This paper holds the tendency to be sound, within limits at least, and sets forth below a theory of the removal power which will allow independence of tenure to these boards and commissions. But it is to be noted at this point that the question of independence of tenure is broader than is indicated by the title of the paper, and that the theory of the removal power hereinafter set forth makes it possible for Congress to protect also the comptroller-general, and even the heads of such departments as are created to carry into execution its own powers rather than the independent, political, constitutional powers of the President. The time may come when Congress will see fit to make the Post Office Department and the Department of Agriculture and similar services independent establishments.

Whether any such officers are "inferior" or not, in practice they are so important that it is wise to leave their appointment to the President. In that event, according to the Myers *dicta*, Congress cannot restrict the President's power to remove them. If these dicta be accepted, Congress can regulate the tenure

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The question at once arises: Does the Myers case[14] establish beyond doubt that he has such power? The majority opinion in that case clearly claims that he has an illimitable power to remove all executive officers whom he appoints, at least with the consent of the Senate, and specifically includes the members of these bodies in that category.[15] Does that necessarily settle the matter?

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of office only of "inferior" officers, and only of these by taking the power to appoint them from the President. It is not likely that Congress will vest the appointment of interstate commerce commissioners in the heads of departments, though it might see fit to solve the problem of the comptroller-general by vesting his appointment in the Supreme Court. It could then control his removal, as is pointed out by Mr. Langeluttig in a recent article. It might even vest other appointments in the courts, though this would be a departure upon which Congress might not wish to embark upon a large scale. Under our theory, such expedients would be unnecessary.

Another phase of independence of tenure is, of course, related to the merit system. But even according to the *dicta* of the Chief Justice in the Myers case, this can be satisfactorily taken care of by vesting the appointment of officers in the classified services in department heads. Congress can then regulate tenure. Our theory would make this possible, however, even if there were a permanent under-secretary appointed by the President himself.

[14] 272 U.S. 52. The reader will find not only the opinion of the Court, but the briefs and arguments of counsel on re-argument, in Sen. Doc. No. 174, 69th Cong., 2nd Sess.

[15] The Chief Justice, in his opinion, said in part: "The imperative reasons requiring an unrestricted power to remove the most important of his subordinates in their most important duties must, therefore, control the interpretation of the Constitution as to all appointed by him. . . . . There may be duties of a quasi-judicial character imposed on executive officers and members of executive tribunals whose decisions after hearing affect interests of individuals, the discharge of which the President cannot in a particular case properly influence or control. But even in such a case he may consider the decision after its rendition a reason for removing the officer. . . . . The Court also has recognized in the Perkins case that Congress in committing the appointment of such inferior officers to the heads of departments may prescribe incidental regulations controlling and restricting the latter in the exercise of the power of removal. . . . . Congress is only given power to provide for appointments and removals of inferior officers after it has vested, and on the condition it does vest, their appointment in other authority than the President, with the Senate's consent. . . . . Whether the action of Congress in removing the necessity for the advice and consent of the Senate and putting the power of appointment in the President alone would make his power of removal in such case any more subject to congressional limitation than before is a question this court did not decide in the Perkins case. Under the reasoning upon which the legislative decision of 1789 was put, it might be difficult to avoid a negative answer, but it is not before us and we do not decide it." This last is obviously a *dictum*, so that it is admittedly

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This question can be answered intelligently only upon the basis of a clear understanding of the principle of *stare decisis*.[16] Under that principle, historically and realistically considered, the word patterns of the Chief Justice are not *per se* rules of law. Neither are his premises to be so regarded; for the Court often in later cases so narrows the application of those premises as implicitly, if not explicitly, to repudiate them in their original form.

This does not mean that the bare judgment is all that is left. In the Myers case the judgment was that the Myers estate could not recover the remainder of the ex-postmaster's salary.[17] If we stopped there, we could never apply *stare decisis*; for the event never repeats itself. Generalization of some sort becomes necessary. We hold that we do not have to accept the generalization which the Chief Justice deduced from premises which he had first to read into the Constitution before he could take them out again.[18] Generalization rather involves

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possible under the Myers *opinion* for Congress to regulate presidential removals, provided the Senate is willing to forego its check upon appointments. This, however, is hardly a satisfactory solution.

[16] The position here taken is but an application of the approach to *stare decisis* outlined by Professor Oliphant in his presidential address before the Association of American Law Schools, December, 1927. See *American Law School Review*, vol. 6, No. 5.

[17] Briefly, the facts of the case were: One Myers was appointed postmaster (first class) at Portland, Oregon, under a statute of 1876, which provides: "Postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate, and shall hold their offices for four years unless sooner removed or suspended according to law." Less than three years later President Wilson removed Myers over his protest. By not appointing a successor to Myers during the remainder of the term, the President kept the Senate from having an opportunity to consent to his removal by consenting to the appointment of a successor. Myers filed suit in the Court of Claims for the remainder of his salary, and after his death the suit was prosecuted by his administratrix. The Court of Claims gave judgment against Myers, holding him guilty of *laches*. The Supreme Court, on appeal, held he was not guilty of *laches* and affirmed the judgment on the ground that Myers was properly removed, the statutory provision quoted above being unconstitutional. The point is, however, that that provision contained only one type of restriction upon the removal power, and hence the case is in point only with reference to that type.

[18] Professor W. W. Cook compares this show of "logic" as the supposedly sole basis of decision to the sleight-of-hand trick of extracting rabbits from a hat. Of course, the judge, unlike Houdini, is not always conscious of the step by which he puts the rabbits into the hat. Once they are in, syllogistic logic gives us an "irrefutable" answer.

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the formulation of a series of propositions, each broader than the rest, yet each a generalized description of the judgment in the light of the facts; and then the selection of one of these propositions as the "rule" which, it is hoped or predicted,[19] will be a description of future cases. Otherwise, we get away from *stare decisis* to what Professor Oliphant has called *stare dictis*.

We have been able to elaborate eight or ten such generalized descriptions of the Myers judgment. These we may merely indicate by asking two questions: (1) To what class of officers does this decision apply—to first-class postmasters only, or to all postmasters, or to all executive officers whom the President appoints, or to all executive officers of the United States? (2) With reference to the selected class, what statutory limitations does the decision invalidate—those that require senatorial consent to removals only, or all which require participation or initiation by Congress, or all which seek in any way to regulate the conditions of tenure of office? Of the resulting series of propositions, some are unlikely to be accepted, while others would lead to undesirable consequences.[20] We accept as the rule for the Myers case which we should like to see the basis of future decisions, the principle that Congress may enact no laws which attempt to draw to itself or one of its branches the executive act of removal or participation therein.[21]

[19] If we are *arguing* the case, as in this article, we may state what we *hope* the rule will become. If we are asked what the law "is," we *predict* what the court is apt to do in the future cases.

[20] For example, there seems no reason to suppose that first-class postmasters, or even postmasters in general, form a special class *for the purpose of the power of removal*. Again, the present writer has written this paper to urge that the conclusion that Congress may not in any way limit the President's power of removal is unnecessary, and leads to undesirable consequences.

[21] This is precisely what the statutory provision which the Court held invalid did. Hence, on a strict application of *stare decisis*, this is all that the decision necessarily covers. See note 17 above. This was admitted in the brief of Solicitor-General Beck (see Sen. Doc. No. 174, 69th Cong., 2nd Sess., 69–71). Speaking of the question "in its narrower aspects," he said: "*In limine*, I stress the point that it may not be necessary in the instant case to determine the broader aspects of this important question, for the statute under consideration can be held unconstitutional without assuming the absolute power of the President to remove any executive officer. . . . . Hitherto it has been assumed in the discussion of this question that there is no middle ground between the *absolute* power of the President to remove and the *absolute* power of the Congress to control the right of removal. . . . . Whether this middle ground exists need not be decided in this case, for the law now under consideration simply asserts

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We may now imagine ourselves in the position of the Court, faced by the Myers decision as thus interpreted, and seek to formulate a constitutional theory of the removal power which will be consistent with that decision as well as with the Constitution, and which will at the same time lead to the consequences which we have outlined as desirable.[22] In justification of this procedure, we refer our readers to that enlightened passage in Mr. Justice Holmes' *Path of the Law*, where he says that while the language of judicial decisions is mainly the language of logic, behind the logical form lies a judgment of expediency which is the very root and nerve of the whole proceeding; and that it is the duty of judges to recognize this fact and to proceed upon it.[23] An approach thus sanctioned can hardly be juristic treason.

But if ever there was a problem in dealing with which we are free to make this approach, it is that of the power of removal. On this subject the Constitution itself is not even ambiguous. It resembles the Sphinx rather than the Oracle of Apollo. Before the Myers decision, Professor Lindsay Rogers well remarked that the Court would have to determine what the Constitution would have said on such a subject if it had not been silent.[24] Neither the Constitution, nor logic, nor history gives us an inescapable answer.[25] This being so, it would seem that not even the Chief Justice could claim that his theory is the "only possible logical conclusion" that can be drawn.[26] It would further seem that we are forced to make a choice between competing

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an unqualified right of the Senate to participate in the executive function of removal. Such a law is not the declaration of a legislative policy. It is a redistribution of the powers of government." This paper attempts to take the "middle ground" suggested by Mr. Beck.

[22] Namely, guarantee by law of independence of tenure of members of federal quasi-judicial commissions.

[23] *Collected Legal Papers*, 180–184.

[24] *The American Senate*, 35.

[25] This is seen in the fact that the Chief Justice on the one hand, in his opinion for the Court, and Mr. Justice McReynolds and Mr. Justice Brandeis, in their dissenting opinions, as well as Professor Corwin, on the other hand, draw opposite conclusions from an examination of the Constitution, logic, and history. Professor Corwin's views are set forth in his little volume entitled *The President's Removal Power*, in the National Municipal League Monograph Series, 1927. The present paper has not attempted a reconsideration of the historical material.

[26] It will be noted that this is not claimed by the present paper concerning the theory of the removal power hereinafter set forth.

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theories, and that it is our duty to choose that one which will lead to the most desirable consequences.[27]

Let us seek to avoid certain pitfalls into which the Chief Justice fell. Maclay quotes Ellsworth as having said that the power of removal is a "tree" on the President's "half-acre" of executive power.[28] In effect, the Chief Justice concluded that for Congress to cut a single limb from this tree of removal would be for it to trespass upon the executive power.[29] We should strive, however, to avoid the fallacy of reifying our concepts.[30] By treating the power of removal as if it were an entity, we endow it with an absoluteness not necessarily to be inferred from the Constitution. We are thus led to neglect equally relevant clauses in Article I. If our constitutional theory has any special virtue as a piece of construction, it is that it seeks to read together all relevant clauses of the Constitution. In his zeal for "the executive power," the Chief Justice neglected this fundamental rule of construction.[31]

Our constitutional theory can best be presented by drawing some fundamental distinctions. The first is between the *act* of removing and the enactment of *laws* governing the tenure of office.[32] The power to perform the act of removing is a correlative of the administrative relationship of superior to inferior. Where the Constitution and laws place the one, the other is impliedly involved. The power of appointment as such is conclusive evidence of the establishment of the administrative relationship only in the absence of other such evidence.[33]

[27] See note 23 above.

[28] Maclay's *Journal*, 114.

[29] Thus the Chief Justice says: "Mr. Madison insisted that Article II by vesting the executive power in the President was intended to grant to him the power of appointment and removal of executive officers *except as thereafter expressly provided in that article.*" (Italics mine.)

[30] Cf. Cunningham, *Textbook of Logic*, 403.

[31] See Willoughby on the Constitution (2nd ed., 1929), §40.

[32] Cf. Senator Pepper's oral argument, Senate Document cited in note 21, p. 172.

[33] The contention here made is that, when writers say that the power of removal is an incident of the power of appointment, they really mean to say that it is the correlative of the power of administrative supervision. Otherwise, they are driven, if they seek to uphold the power of removal as residing in the President alone, to resort to a forced distinction between the power of appointment and the power of advising and consenting to appointment, and to deduce a presidential power of removal from the former only. The really significant fact in this situation is that the power of removal is deducible from a combination of clauses which, taken together, make him the administrative superior. The power of appointment is only one of these. See the text below.

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But under the separation of powers, the power to perform the act of removing officers performing executive functions can, in the absence of other evidence in the Constitution itself, be vested only in executive officers. For the power to perform this act is *prima facie* an executive act.[34] On the other hand, the power to enact laws governing the tenure of office is legislative in character, and is so clearly and directly related to the legislative policy involved in the creation of the office that, in the absence of contrary evidence in the Constitution, such legislative enactments have a presumptive validity.[35]

A second distinction relates to the purposes for which offices may

[34] It follows from the separation of powers that Congress has considerable power to vest duties in executive and judicial officers, but that it cannot vest the performance of an act held to be executive in another department except by express authorization of the Constitution. It may be argued that if the act of removal is "executive" in character, then the opening sentence of Article II vests the power to perform it in the President. Or, from another angle, it may be argued that the net result of our theory is to allow Congress to vest executive power in officers or boards other than the President and not even responsible to him. Is not this, after all, inconsistent with the opening sentence of Article II? The answer would be affirmative if we took that sentence as a categorical absolute and apart from the whole context. But if we did that, the result would be inconsistent with a similar absolute interpretation of the "necessary and proper" clause. We are thus forced to a choice. Again, a still more absolute interpretation of the opening sentence of Article II, if we may be pardoned the bull, would enable the President to perform personally (say) "executive" authority delegated to the Interstate Commerce Commission by law. Not even the Chief Justice holds this view. We feel it a more reasonable view to hold that the said opening sentence vests the thereafter named executive powers in the President. Besides these constitutionally vested executive prerogatives, there are executive functions created by law and vested by law directly in officers who are also purely creatures of law. The authority to regulate even the tenure of such officers is found in the necessary and proper clause. This phase of executive authority is in its nature a product of legislation. In this respect the separation of powers means only that Congress is confined to making regulations, and may not take to itself the actual performance of administrative tasks; and that the courts, being confined to hearing cases and controversies, may not be given such functions by law, except as provided by the Constitution. It is only as read in connection with the opening sentences of Articles I and III that the opening sentence of Article II may be said to refer in any way to the executive function in general. That function comes into being only as created by law; but by the rule *expressio unius est exclusio alterius* the law-maker cannot take the function to itself. All of which merely means that the separation of powers is not the perfectly simple triangular arrangement which some theorists try to read into the Constitution.

[35] This is clear from Article I of the Constitution. See text below.

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be created under the Constitution. Some are set up as "necessary and proper" means for carrying into execution the enumerated powers of Congress, others as "necessary and proper" means for carrying into execution independent political powers of the President.[36] The significance of this distinction becomes clear only when we recall the Anglo-American conception of executive power as embodied in the Constitution. According to that conception, the executive power falls into two distinct classes: (1) certain political powers of a discretionary nature vested by our Constitution directly in the President, and to be exercised by him upon his own initiative and without interference by Congress; (2) the executive function in the general sense of administration of the laws, a function which the President cannot himself perform in full, and which by its very nature is relative to the laws and involves only such discretion as is expressed or implied in the laws themselves.[37] Accordingly, some of the offices created by Congress are created to aid the President in the performance of his independent executive powers, and others for the purpose of establishing agencies to administer, in accordance with the second class of executive power, the laws enacted under the enumerated powers of Congress. As we shall see, what Congress may do in creating offices is conditioned by this distinction.

Upon these fundamental distinctions our theory of removal is based. The framers could have given the President the power of removal in explicit language. That they did not do so indicates that that power is to be inferred from the power of administrative supervision as its correlative. What can we infer from the Constitution on the power of administrative supervision? In answering this question we must be careful to read together all relevant clauses of the instrument, and avoid looking solely at Article II. By so doing, we see that the framers did not mean to give the President an absolute and illimitable power of administrative supervision over all officers of the executive department, or even over all whom he appoints, but that they left considerable scope for statutory regulation of the matter.

It is in this connection that our distinction between the purposes

[36] A careful reading of the "necessary and proper" clause shows that the laws to be passed under it fall into two classes: (1) those to carry out the aforementioned powers of Congress, and (2) those to carry out all other powers vested by the Constitution in the government, or any department or officer thereof. Clearly Congress has more leeway under (1) than under (2).

[37] Cf. note 34 above.

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for which offices may be created becomes important. Over those principal offices established by Congress as "necessary and proper" means for the carrying out of the independent political powers which the Constitution vests directly and explicitly in the President, he has a power of removal that is absolute and illimitable.[38] For by reading together his power of appointing, perhaps his position as "the executive," and the enumerated presidential powers in question, we derive a resulting power of absolute administrative supervision relative to such officers. This gives us an absolute correlative power to remove them. Furthermore, for Congress to make such officers independent of the President would be for it to control him in the exercise of his independent powers. What it can do in creating these offices is limited by the primary fact that they are created as "necessary and proper" means for carrying out, not the enumerated powers of Congress, but those of the President. Such officers are the secretaries of state, war, and the navy, ambassadors, other public ministers, and perhaps others that the Court might place in the same category.[39]

Other offices, however, are created as "necessary and proper" means for the execution of the laws enacted by Congress under its own enumerated powers of legislation. With reference to the removal of their incumbents, we have first to consider the situation which exists in the absence of legislation, and then we may take up the scope and limitations of the power of Congress to regulate such incumbents' tenure of office.

The Constitution may be taken to imply that, in the absence of clear legislative language to the contrary, the President has the power to remove all such officers whom he appoints. This is a resulting power inferred from his power of appointing, perhaps also his position as "the executive," *taken together with* his duty to see that the laws are faithfully executed. Read together, these clauses make him, conditionally, the administrative superior of all such officers, and hence give him the correlative power to remove them.

[38] Cf. note 36 above.

[39] The distinction seems clear, in general. There is left a "margin of doubt." This would be a disadvantage, were it not for counterbalancing advantages to be derived from the distinction. All broad distinctions leave a "margin of doubt." Are we to stop drawing them for that reason?

We may add that if a particular service were given both types of function, the President could still remove its head at pleasure. Otherwise, Congress could use this as a means of dominating the President, let us say, in foreign relations.

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Why conditionally? Because by reading together the enumerated powers of Congress, its power to create offices and its power to pass all laws "necessary and proper" *for carrying into execution* its other powers, we find Congress to have a resulting power to regulate the conditions of tenure of such offices. These are as much a "part" of the office that is created as are the qualifications of office; while their regulation by law may be a "necessary and proper" means of making the office an effective medium for carrying into execution the legislative purpose.[40] Moreover, by enacting such laws Congress does not infringe upon any independent executive powers. Even if the opening sentence of Article II be taken as a grant of general executive power,[41] there is no justification, in view of these relevant clauses in Article I, for reading into "the executive power" as such a power to defeat an express legislative purpose. For we have seen that, aside from specified political powers, the Anglo-American conception of executive power involves a power that is relative to the legislative will.

The better opinion, however, is that the opening sentence of Article II[42] is meant merely to summarize and characterize the specific powers that follow; to designate the President as a "single" executive finally responsible for the exercise of the independent powers and duties granted him; and to make it clear that Congress may not vest the power to perform an act of an executive nature in the courts or take such power to itself, except as the Constitution may otherwise provide.[43]

The only other clause of Article II which Congress might be thought

[40] There is no reason for ignoring these provisions of Article I and the inferences that may be drawn from them. In view of these possible inferences, it seems a sounder construction to avoid taking either horn of the dilemma and to work out, as this paper has tried to do, a "middle ground" theory which seeks to give due weight to both Articles I and II.

[41] One of the most striking things about the opinion of the Court in the Myers case is the emphasis upon the theory that this sentence is a grant of general executive power. The Court here, so far as the writer knows, takes advanced ground upon this issue so long debated. (On the general issue, see Hart, *op. cit.*, 115–117, 192, 196, 211, 220 ff.) This is believed to be unfortunate. It leaves scope for too many deductions of presidential powers which might be unwise. One such deduction is made in the broad *dicta* of the Myers case.

[42] "The executive power shall be vested in a President of the United States of America."

[43] That would amount to a reallocation of powers which the Constitution itself allocates. The exact definition of these powers is ultimately a judicial question.

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to violate in this connection is that which makes it the duty of the President to see that the laws are faithfully executed. This is the only specific clause that is related to the second class of executive powers listed above, namely, the general administration of the laws. We have already pointed out that, according to the Anglo-American conception, executive power in this sense, though vested under our system in separate hands, must flow only in the channels prescribed by law.[44] The imposition in this clause of a duty upon the President by its very terms limits his power to the carrying out of the laws. It gives him no independent powers as against the laws.

The Constitution clearly provides for the establishment of other executive offices.[45] Where they are set up to execute congressional powers, Congress can fix their duties.[46] Only by distorting the faithful execution clause can we read into it any power to violate otherwise constitutional statutes which fix the tenure of such offices, which are direct agencies of Congress, created by it for the effectuation of its legislative purposes, and hence subject to its regulations in a way that the President, in the exercise of his independent political powers, is not. For the President to ignore such tenure of office acts on the theory that they are *ipso facto*[47] invalid is to violate his express duty.

Nor is Congress in such legislation infringing upon the President's resulting power of administrative supervision. We have already shown that this is an inferred power, and that by reading together Articles I and II we may infer only a conditional power of supervision over the officers under discussion. Only thus can we give full weight to the policy-forming powers of Congress as well as the powers of the President.

[44] Cf. Senator Pepper in Senate Document quoted in note 21, p. 173. Senator Pepper does not, however, make clear whether he is referring to the President's duty to obey the law or to the validity of the law when before the courts. The distinction is important. The Court in the Myers case did not pass upon the question whether the President is in duty bound to obey such a law. It merely passed upon the validity of the law relative to a private claim against the United States based upon it. The fact that the claim arose out of the President's disobedience to the law is a question for the House in bringing impeachment. We need not go into it here.

[45] Art. II, §2.

[46] Also their terms, the qualifications of their incumbents, and reasonable classifications for promotion. This the Myers opinion admits, but it holds the power of removal to be specially and peculiarly "executive."

[47] By *ipso facto* invalid, we mean invalid for the very reason that they limit the otherwise unlimited power of removal.

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What about the claims of the Senate? We have seen that the power of removal is a correlative of the power of administrative supervision. The President's position of administrative superior, both in its conditional and in its absolute aspects, is inferred from several of his powers taken together. The Senate is related to only two of these powers,[48] those of appointing and treaty-making, and only by way of express exception. There is nothing, therefore, to indicate that the Senate has directly from the Constitution any claim to a share in administrative supervision, or in the correlative power of removal. This view is strengthened by the fact that the act of removal is an executive act, in which the Senate may not share. For the Senate is a legislative body which is made an executive council only in the case of the two express exceptions noted above.

It follows from the same reasoning that Congress may not by law draw to itself or to one of its branches participation in the executive act of removal.[49] It can, with reference to certain officers, regulate their tenure, but in so doing it may not violate the principle of the separation of powers; and if it does, no claim against the United States can be allowed under its act.[50] That is precisely what Congress had attempted to do in the act held invalid by Myers v. United States. That it may not do so, we hold to be the point decided by the case, the *dicta* of the Chief Justice to the contrary notwithstanding.

If our general theory be acceptable, it is clear that such a law as the act of 1876[51] is not on all fours with the statutory requirement that officers whose offices are created as means for the execution of congressional powers may be removed for specified causes only, and only after notice and hearing, and upon grounds publicly set forth in writing; or even with the prescription that such officers shall hold for a stated period of years, unless meanwhile removed upon impeachment. Of these, it is admitted at once that the latter goes much further.

[48] We can arrive at this conclusion without difficulty because we have not inferred the power of removal from the power of appointment taken alone, but from several presidential powers considered together.

[49] See argument of Mr. Beck, cited in note 21 above.

[50] This, at least, seems clear from the Myers decision. Whether or not we should have so argued before that decision, we must accept this as settled by it. Our thesis is that this is all that the decision does settle, or all that it must necessarily be held to have settled. The rest is a matter of guessing future decisions. See below on that point.

[51] That is, the one held invalid in the Myers decision.

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But if our reasoning be accepted, it is permissible.[52] The character and sense of responsibility of our presidents is such that even such a restriction as the former sort will prove helpful. While it leaves the final decision to the President, constitutional *mores* and public opinion could probably be depended upon to restrain him.

But the proof of the pudding is in the eating. What is the probability that the Court will narrow the premises of the Myers case, even though perhaps not explicitly doing so? There are several considerations which suggest that it will not. Here was a vexed question never before authoritatively passed upon. After most careful consideration, including a re-argument in which a distinguished lawyer from the Senate[53] represented the interests of that body as *amicus curiae*, the Court attempted to settle the broad question in a carefully and elaborately reasoned opinion to which six of the nine judges assented.[54] The reactions of the majority were distinctly favorable to the executive viewpoint.[55]

There are, however, factors in the situation which lead us, if not to predict, at least to say that it is not improbable, that the brethren of the Chief Justice will refuse to follow him all the way in making his broad *dicta* the law of the land. The opinion was written by an ex-President. It is in no spirit of irreverence toward the Chief Justice, for whom our admiration is sincere, that we are constrained to suggest that he saw through executive-colored glasses. Our guess is that when the issue is clearly drawn with reference to an officer like the comptroller-general[56] or an interstate commerce commissioner, or perhaps

[52] We are less inclined to predict that this will be upheld than that the other type of restriction will be. It may be said, however, that the fact that tenure during good behavior was granted judges does not prove that the framers meant to forbid Congress to grant it to other officers. Here is a case where the maxim *expressio unius exclusio alterius* does not apply. Cf. on this point Springer et al. v. Government of Philippine Islands (72 L. ed.).

[53] Senator Pepper, of Pennsylvania.

[54] The dissenters were Justices Holmes, McReynolds, and Brandeis.

[55] Springer et al. v. Government of the Philippine Islands (72 L. ed.), while relating to usurpation of the appointing power by the territorial legislature, employs the reasoning of the Myers case, thus showing that the majority may in all probability consider the issue settled. But it should be noted that this case is analogous to the Myers case in that the facts before the Court do not justify the broad *dicta* of the Myers case. There is still a possibility, as suggested in the text above, that the Court will reconsider the matter when a sharply different case is presented.

[56] See Solicitor General Beck's statement cited in Willoughby on the Constitution (2nd ed., 1929), §1000. On the general subject, see *ibid.*, chap. 84.

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with reference to other types of limitations,[57] the Court will not improbably begin to draw distinctions. This prediction is supported by the fact that the Chief Justice's ideas on expediency run counter to the generally accepted principles of the art of government,[58] and have been very ably criticized not only by the dissenting opinions, but by distinguished scholars like Professor Corwin.[59] A Court that is becoming increasingly sensitive to professional opinion will[60] undoubtedly at least undertake a careful reconsideration of this issue when it is faced with a case which is sharply different from Myers v. United States.[61]

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[57] Such as those suggested above as permissible.

[58] It is assumed that political scientists will generally agree that the tenure of quasi-judicial officers should not, as a matter of policy, be at the mercy of a political chief.

[59] See citation in note 25 above.

[60] It is generally recognized, for example, that law review criticisms affect judicial opinion.

[61] Several major objections have been urged against the theory of this paper. One is that it would tend to establish parliamentary government. We may reply that there is no such thing as parliamentary government in general. It works one way in England, where the cabinet predominates, and another way in France, where groups in the Chamber dominate the cabinet. There is a certain common element, the necessity for political solidarity between legislature and executive. This paper seeks to get certain establishments as far as possible away from the political arena. Its theory will perhaps make Congress more powerful in some ways and the President less so. But it will not, in all probability, tend to set up the political solidarity referred to. We prefer to seek the desirable course without regard to whether that course will have the remote effect suggested. We cannot predict such remote effects. Anyway, our theory protects the independent constitutional powers of the President fully as much as any other.

Another contention is that the theory herein set forth violates the "logic" of the situation created by the separation of powers dichotomy. In answer, the reader is referred to the dissenting opinion of Mr. Justice Holmes in Springer et al. v. Government of the Philippine Islands (72 L. ed.). He points out, with illustrations from the cases, that the separation of powers is not an exact absolute from which we can make simple deductions to settle all cases. This paper is a protest against the idea that we must take one or the other horn of a dilemma.

Let us add that this theory could be applied without destroying the position of the chief executive as "president" of the government as a "business concern." He could still make his recommendations to the "board of directors," including his budget. Mr. W. F. Willoughby has recently suggested an important dis-

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Marbury v. Madison Today. In 1803 the Supreme Court, in an opinion written by Chief Justice Marshall, refused to enforce an act of Congress on the ground that it conflicted with the Constitution. This decision[1] was noteworthy in that it was the first occasion on which the Supreme Court asserted such a right, and it has since come to be looked upon as the cornerstone of judicial supremacy.

The accuracy of the Chief Justice's reasoning has been attacked on various grounds, and it has been pointed out that every argument used by him in favor of judicial review begins by assuming the whole ground in dispute.[2] Very few authorities who have taken this view have asserted that the courts have usurped this power. Obviously nothing could be farther from the truth. A course of action which had the backing of nearly every influential member of the Constitutional Convention, which was frequently stated, generally without opposition, in the various ratifying conventions, and which was very clearly set forth in the *Federalist*, cannot be said to be a "usurpation of power" in any sense of the term. However, authorities do point out that the true explanation of this power of our courts is not to be found in the mere fact that we have a written constitution which is the "supreme law." Marshall himself recognized this shortly after the Marbury case, when he gave equal weight to the "general principles which are common to our free institutions" along with "the particular provisions of the Constitution of the United States," on the theory that "the nature of society and of government . . . . prescribe some

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tinction between a bureau like that of the budget, concerned with the *running* of the government as a "going concern," and a branch like the postal department, which is itself and directly a *service performing* agency. It is not necessary for the President to control the latter. The real advantages of making him "business manager" come from his control of the institutional rather than the service-rendering agencies. Mr. Willoughby suggests that the eleven agencies of the former sort be grouped into one department under the President.

[1] Marbury v. Madison, 1 Cranch 137 (1803).

[2] Granting that the Constitution is a law of superior obligation, on what grounds do the courts assert that their judgment is superior to that of the legislature that enacted the law? If the oath of office be the test, would not a different conclusion seem necessary? The judges take the same oath as every other public official, national or state, save one—the oath of the President is provided in the Constitution itself. Consequently, the President becomes the guardian of the Constitution, with the duty of refusing to enforce any decision that the courts may render if he believes it to be an incorrect construction of that document.

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limits to the legislative power."[3] Not a single member of the Court dissented from this view, and Justice Johnson showed a willingness to go much further.[4]

It is not the purpose of the present article to discuss the true basis of judicial supremacy. That has been done on numerous occasions. Neither is it my purpose to discuss the validity of Marshall's view that judicial supremacy must be "one of the fundamental principles of our society," and that legislative supremacy would "subvert the very foundation" of constitutional government, nor yet the counter view of Blackstone that "to set the judicial power above that of the legislature . . . . would be subversive of all government."[5] Such questions cannot be solved either by legal reasoning or by abstract theory. I propose to examine Marbury v. Madison from an entirely different angle, with a view to answering two questions: First, was the Court called upon to decide the constitutionality of the act of Congress, or did the Chief Justice and the Court manufacture this "necessity?" Second, granting that a decision was necessary on this point, was the question decided properly? I shall seek to answer each question in the light of later Supreme Court decisions.

The case arose out of a refusal of President Jefferson to deliver commissions as justices of the peace of the District of Columbia to Marbury and others, such commissions having been signed by President Adams immediately before the expiration of his term of office. The Judiciary Act of 1789 authorized the Supreme Court "to issue writs of mandamus . . . . to any . . . . persons holding office under the authority of the United States." In pursuance of this statute, Marbury and others moved the Court for a rule directing James Madison, secretary of state, to show cause why such a writ should not issue commanding delivery of their commissions. The opinion of the Court raised three questions: First, were the petitioners entitled to their commissions? Second, was mandamus a proper writ? Having answered both in the affirmative, the Court reached the third question:

[3] Fletcher v. Peck, 6 Cranch 87 (1810), often referred to as the Yazoo Frauds case.

[4] Johnson, J., stated, "I do not hesitate to declare that a state does not possess the power of revoking its own grants. But I do it on a general principle, on the reason and nature of things: a principle which will impose laws even on the Deity." He added that he wished it "distinctly understood that [his] opinion on this point is not founded on the provision in the Constitution." *Ibid.*, 143–144.

[5] *Commentaries*, Bk. I, 91.

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Did it have jurisdiction to grant a writ of mandamus in an original proceeding? Here the Court examined the Constitution, and found no such jurisdiction granted. It examined the statute, and construed it to purport to give such jurisdiction. The final step was to hold that, in extending the jurisdiction of the Court, it conflicted with the Constitution, and was therefore void and of no effect.

Was the Court justified in passing upon these two preliminary questions before passing to the third, that of jurisdiction? President Jefferson said, in no uncertain terms, that it was not, but that in doing so it had taken up the cause of a defeated political party, and had stepped outside its proper sphere to deliver a lecture to the Chief Executive. It has since become an established custom, in constitutional cases, that the Court will not pass upon the validity of a statute if the case can be decided upon any other ground. This doctrine is frequently cited to disprove Jefferson's charge, and to justify the action of the Court. It is very doubtful whether Marshall had this idea in mind. Even so, it is an unsound justification. There was no other ground on which the Court could decide the case.

The application of the rule that a court will refuse to pass upon the constitutionality of a statute if such a decision is not necessary to the final disposition of the case is very simple. Suppose that P. sues D., alleging that statute X entitles him to recover $2,000. D. sets up a double defense: First, P. has surrendered his right to the $2,000; second, the statute is unconstitutional. If the court finds that the first defense is true, it will not go into the question of the validity of the statute, since this could not alter the disposition of P's claim.

Marbury v. Madison presents an entirely different set of facts. The validity of the statute was of controlling importance, for it was the sole source of the jurisdiction of the Court even to hear the case, and to render any decision. Having no jurisdiction, the Court's statement that Marbury was entitled to the commission was not a part of the decision, but was *dicta* purely and simply. A contrary conclusion, then, that he was not entitled to this commission would likewise have been *dicta*. It would have bound no one, not even a lower federal judge. It could not have been made a ground for the disposition of the case.[6]

[6] "Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Chief Justice Chase in ex parte McCardle, 7 Wallace 506, 514 (1868).

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The Supreme Court itself, in a recent decision, has upheld this view, and has frustrated the attempt to justify the remarks of the Court on the illegality of the President's line of conduct. In an opinion written by Chief Justice Taft,[7] Marshall's conclusions in this regard were brushed aside as not being part of the decision, but only an "obiter dissertation." The Supreme Court itself has vindicated President Jefferson's reply.

Even after deciding that Marbury was entitled to his commission and that mandamus was a proper writ, there was no necessity for holding that the statute involved was unconstitutional. Even granting that Congress has no authority to add to the original jurisdiction of the Supreme Court, there was still no such necessity; and few courts today would reach such a conclusion. The statute, properly construed, did not extend its jurisdiction; it merely gave authority to issue writs of mandamus in all proper cases where the Court did have original jurisdiction.[8] Such a construction would have given the same result: Marbury's right to office would have been asserted by the Court, and its power to aid him in securing his rights would still have been denied. It would have lacked but one feature of the other construction—the Court would not have been called upon to hold void a statute passed by Congress.

But the correctness of the Court's conclusion that Congress cannot add to the original jurisdiction of the Supreme Court is anything but certain. The Constitution merely provides that in certain types of cases "the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction . . . . with such exceptions, and under such regulations, as the Congress shall make."[9] There are two very different views as to the proper interpretation of this clause. The first is that the grant was non-exclusive and could be added to by Congress. This was the view, according to the Court, taken by the first Congress in 1789, in giving it jurisdiction to issue writs of mandamus in cases not otherwise falling within its jurisdiction. The contrary view is that the grant was exclusive, and could not be altered by Congress. This was the view taken by Marshall and the Court. However, this con-

[7] Myers v. U.S., 272 U.S. 52 (1926). See also Parsons v. U.S., 167 U.S. 324 (1897).

[8] This is the form in which the statute reads today. 28 U.S.C.A., Sect. 342. See Corwin, *The Doctrine of Judicial Review*, 7–9.

[9] Art. III, sect. 2, cl. 2.

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struction has not been consistently followed. Indeed, by the very act in question, the Judiciary Act of 1789, Congress gave the inferior federal courts concurrent jurisdiction with the Supreme Court over certain cases falling within the original jurisdiction of the latter. These grants to the lower courts are in effect today,[10] and have been approved in numerous cases.

These grants can be distinguished from the one involved in the Marbury case in that they do not extend the jurisdiction of the Supreme Court, nor do they narrow it to the extent of prohibiting the exercise of any of its original jurisdiction. But such is not the case in a line of decisions starting with North Carolina v. United States.[11] The Constitution contains no express provision extending the jurisdiction of the Supreme Court to suits between the United States and a state. In Marbury v. Madison, the Court held that Congress cannot add to its original jurisdiction; in this later line of decisions it held that it has implied jurisdiction in certain cases, entirely apart from any express provision in either Constitution or statute. It thus appears that the Court itself has rejected Marshall's narrow construction of this provision of the Constitution.[12]

If the value of the two doctrines be considered, apart from any narrow legal question, the view of Congress is undoubtedly the better. In most states today public officials are mandamused in the highest court. This avoids appeals, delay, and unnecessary costs, and insures that important state questions will be passed upon directly by a court really competent to deal with them. Because of Marbury v. Madison, federal officials can be mandamused only through the lower courts.[13]

Thus we are led to conclude, first, that the Court erred in passing upon the legality of Marbury's claim to office before passing to the statute purporting to give it jurisdiction to hear the case; second, that the statute, properly construed, did not give the Court jurisdiction, and therefore raised no issue of constitutionality; and third,

[10] 28 U.S.C.A., Sect. 41 (18). The provision covers all suits against foreign consuls or vice-consuls.

[11] 136 U.S. 211 (1890).

[12] It also appears that the earlier attitude of the Supreme Court on the very statute involved in the Marbury case had been that Congress could add to the Court's original jurisdiction. See McLaughlin, "Marbury v. Madison Again," 14 *Amer. Bar Assoc. Jour.*, 155, 158, and cases cited.

[13] Only the local courts of the District of Columbia have been given jurisdiction in such cases.

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granting that the issue of constitutionality was involved, it was incorrectly decided.

There remains another point to be considered. Granting that the Court was correct in deciding that Marbury's right to the commission had to be settled before the validity of an act of Congress could be brought into dispute, this question should have been answered in the negative; and so, following the Court's own line of reasoning, the constitutionality of this statute should never have been raised. Marbury v. Madison went on the theory that the President had no power to remove Marbury from office until the five-year period for which he had been appointed had expired, although the statute was silent as to removal. No decision of the Court has ever upheld this view. Instead, it has been uniformly held that, when the statute is silent on the question, the President may remove at pleasure.[14] Consequently, a proper answer to the question would have been that Marbury was not entitled to his commission. The case would then have ended there, questions two and three going unanswered.

As we have noted above, the opinion was written by the Chief Justice, John Marshall. It may appear harsh, but it is none the less necessary to point out that it would have been more in keeping with sound legal ethics had Marshall, who had a personal interest in the case, withdrawn from the Court during its consideration. As it is, he appears in the rôle of advocate rather than of judge, passing judgment upon his own case.

Few rules of judicial ethics are more definite today than that a member of the court who has a personal interest in the case in hand will not sit during the disposition of that case. This rule is well illustrated in the line of decisions that culminated in Adkins v. Children's Hospital,[15] decided by the Supreme Court in 1923, holding that minimum wage laws for women violate the guarantees of "due process of law," and are unconstitutional. Six years earlier the Court had been faced with the same set of facts and the same questions in Stettler v. O'Hara,[16] a case appealed from the supreme court of

[14] See Parsons v. U.S., 167 U.S. 324 (1897), where the President was sustained in removing a federal district attorney before the expiration of his four-year term. It need scarcely be added that the validity of this view in no way depends upon the soundness of the Myers case. In that case the Court was faced with a statute that expressly provided that Myers could be removed only "by the President by and with the consent of the Senate."

[15] 261 U.S. 525 (1923).

[16] 243 U.S. 629 (1917).

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Oregon. At this time such acts were in force in a number of Continental countries and in England, Australia, Canada, and South Africa, as well as in a dozen of our own states. The Oregon statute had twice been unanimously upheld by the supreme court of the state. With the overwhelming backing of the nations of the world, and with the weight of judicial opinion in this country decidedly favorable, a decision upholding the Oregon statute might well have been expected. It was not forthcoming because one judge withdrew from consideration of the case, leaving a court of eight.

The case had been argued before the Oregon courts by Louis D. Brandeis. Elevated to the Supreme Court by President Wilson, Mr. Justice Brandeis refused to sit as judge in a case where he had been of counsel. The result was a four to four decision which, although it upheld the verdict of the state court, left the question open for the future. Had he not withdrawn, a five to four decision upholding this type of statute would have resulted. Instead, it was later to go down to defeat before a bare majority of one, with the result that minimum wage laws for women are unconstitutional, rather than constitutional, today.

John Marshall's interest in the Marbury case was as personal as that of Brandeis in the Stettler and Adkins cases. Before his appointment to the Supreme Court he had been secretary of state in the cabinet of President Adams. He held this position at the time that Adams signed the commissions of the "midnight judges," and consequently it devolved upon him to deliver them to the new appointees. In the press of business in winding up the affairs of the Federalist régime he neglected to do this. Thus he found himself no longer secretary of state, but with these commissions, still undelivered, lying on his former desk in the executive offices. Marbury v. Madison was an attempt to compel his successor to do what he, Marshall, had failed to do. Brandeis, because he had been of counsel, refused to sit in either the Stettler or the Adkins case. Marshall, although he was a real party in interest in the Marbury case, not only retained his seat, but wrote the opinion of the Court.

In answering the questions raised at the opening of this article, we have been led to conclude that the "necessity" faced by the Court of setting aside an act of Congress as unconstitutional existed largely in the minds of the judges, rather than in the facts of the case. Why should the Court have been so ready to follow this line of argument? If we grant that political expediency plays an important part in

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many Supreme Court decisions, we have a possible explanation in the change of the tide of public opinion against judicial review. We noted above that at the time of the adoption of the Constitution, and in the years immediately following, opinion was predominantly in favor of the courts having this authority. But the pendulum was swinging in the other direction, and by 1803 the opposition to judicial review was at its height. This opposition had been accentuated by the defeat of the Federalist party in the election of 1800, and the advent of the Jeffersonian Republican party to power. There were, then, very good reasons for wishing to assert the right of the Court to review acts of Congress, in no uncertain language, while there was yet time. The fact that in doing so the Court was able to take a back-hand slap at the arch-enemy of the Federalist party, President Jefferson, did not detract from this desire.

Even though the case was decided at the height of the opposition to judicial review, the attacks upon the decision were not based on this ground, but on the fact that it announced that the courts might mandamus a cabinet officer who was acting by direction of the President. The real dispute was between the President and the Court, not the Court and Congress. The immediate reaction to the decision was decidedly unfavorable, since it added to the distrust of the Court on the part of the Administration, and heightened the ill feeling between the two political parties. It likewise lowered the Court in the eyes of the public. The tribunal had become the champion of a defeated faction. In doing so it had stated, in no uncertain language, that President Jefferson was legally bound to commission Marbury as a justice of the peace. Marbury never received his commission; and the action of the President, branded illegal by the Court, received the support of public opinion. Doubtless the same result would have followed had the Court taken a more determined stand, asserted its jurisdiction, and actually issued a writ of mandamus requiring Madison to deliver the commission. The judges are to be complimented on their sound judgment in not going this far.

The decision, however, has been of very great importance in establishing the doctrine of judicial review. Because attacks on the opinion centered about the *dicta* in regard to the illegality of the President's conduct, this part of the decision attracted very little attention, and consequently very little opposition. Although it was over half a century before the Supreme Court again asserted its authority to set aside an act of Congress as unconstitutional,[17] the decision gave an

[17] Dred Scott v. Sandford, 19 How. 393 (1857).

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added impetus to the state courts to assert a similar right as to state legislation, and judicial review soon came to be looked upon as the special privilege and duty of every court, high or low. And so it has remained, with an ever widening scope, to the present day. Had it not been for the precedent established by Marbury v. Madison, it is reasonable to believe that the Court would not have ventured to assert such a doctrine in the Dred Scott case. Instead, we might be governed, as are the great majority of the nations of the world, under a system of legislative supremacy.

In conclusion, it can be said that nothing remains of Marbury v. Madison except its influence upon the development of our system of constitutional law. Its line of reasoning stands repudiated by the Supreme Court itself; even its justification of judicial supremacy has been demolished by various commentators, including later judges of the Supreme Court, and indeed later opinions of Marshall himself. Like the Slaughter House Cases,[18] Munn v. Illinois,[19] and Davidson v. New Orleans,[20] it stands as a landmark in the development of judicial review. But, like the cases mentioned, it has been shorn of all but its historical importance and stands as a warning to those who would attempt to expound the rules of constitutional law simply through a process of analytical reasoning, ignoring the very important contributions of economics and of politics.

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The Report of the Steiwer Committee. The special Senate committee investigating presidential campaign expenditures presented its report on February 28, 1929.[1] The report contains five pages of explanatory material and recommendations, and twenty-five pages of

[18] 16 Wall. 36 (1873).

[19] 94 U.S. 113 (1876).

[20] 96 U.S. 97 (1878).

[1] See this *Review*, vol. 23, pp. 59–69 (Feb., 1929) for my article on "Campaign Funds in 1928." The figures in that article and those in the Steiwer report appear to conflict in several respects. These differences, it is hoped, will be cleared up by the present article. My previous article had to be completed the first week in January in order to be published in the February *Review*. The Steiwer report is Sen. Rep. No. 2024, 70th Congress, 2nd Session. An earlier report on the pre-convention campaign, Sen. Rep. No. 1480, merely reproduces the material found in Part 4 of the committee hearings.

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tabulations. The recommendations are not very sweeping, but they strike at four existing defects in our present federal corrupt practices act, namely, the failure to regulate the conduct of conventions and primary elections for the nomination of presidential candidates, to extend the law to political groups operating in individual states, to require careful and accurate itemization of every party expenditure, and to regulate the borrowing of money by political committees. The committee does not argue the constitutional points involved in its first two recommendations, and it does not reach the real problem involved in party deficits with its fourth recommendation. It leaves many vital problems to future committees.

The information collected by the committee, by means of hearings and correspondence principally, has been set forth in fourteen tables. There is much useful material in these tables, and several angles of the problem of party finance are clearly brought out by the figures. But there are some serious errors, especially in the tabulation of totals. Tables IV and V dealing with the national committee accounts are inaccurate and misleading. The proof of this statement is as follows. The accounts filed by the two national committees, both with the clerk of the House (according to law) and with the Steiwer committee, show that the Republican national committee received for its own purposes the sum of $3,814,000. On page 8 of the report we find the figure $5,715,000. This latter figure is arrived at by adding in the money raised by the national committee for the state committees under a joint arrangement with the states, and then deducting certain sums raised in the states and given to the national committee. The money used by the state committees should be credited to the state committees and not to the national committee, especially when it is desired to get a total figure of all campaign expenditures properly itemized. Otherwise, confusion will result. The Steiwer report has taken this one wrong figure, and thereby has mixed up its other total tabulations. In other words, the committee has used the wrong basis of classification and tabulation.

Whoever made up the report took this wrong figure for Republican national committee receipts, added the state committee receipts (which do not include the money transferred from the national committee), and thus arrived at the total of $10,062,000. Now the Republican national committee actually raised for itself $3,814,000. According to the report, the state committees raised $4,346,000, and the national committee granted $2,191,000 to the state committees.

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This makes the sum of $10,351,000. But actually the national committee collected for and gave to the state committees $2,382,000, and not $2,191,000 as shown in Table IV. The correct total sum of all Republican state and national and subsidiary committee receipts should be arrived at as follows:

National committee receipts (exclusive of transfers)	$3,814,000
State and subsidiary committee receipts	4,346,000
Money transferred for state purposes by national committee	2,382,000
Money transferred for senatorial and congressional committees	344,000
Total Republican receipts	$10,886,000

Using the data collected by the committee, total Democratic receipts should appear as follows:

National committee receipts (exclusive of transfers, but inclusive of loans)	$3,260,000
State and subsidiary committee receipts	2,042,000
Money transferred for state purposes by national committee	2,184,000
Total Democratic receipts	$7,486,000

This last figure, added to the figure showing total Republican receipts, brings the grand total to $18,372,000. This is a mere million more than is shown in the Steiwer report!

Take now the figures for expenditures. The report assumes that all advances from the national committees are included in the state committee expenditures. But the assumption is incorrect. For instance, the Democratic state committee of Kentucky is recorded as having spent $112,000, while on page 8 of the report it is noted that Kentucky received $236,000 from the Democratic national committee, and this sum is therefore deducted from the national committee account. This is not necessarily a case of the state committee failing to report its entire expenditure (although that is probably the explanation); at all events, the Steiwer report fails to include the $124,000 difference in its total tabulation. One hesitates, therefore, to present a figure representing total expenditures from the data given. Such a figure, however, is always the most useful one in studying party funds.

Space prevents detailed discussion of other mistakes, but they should be listed. On page 18 the ways and means committee of the Republican national committee for Pennsylvania is listed with receipts of $683,000, but on page 8 Pennsylvania is credited with $547,000. The Ohio state Democratic figures are wrong, and the report assumes

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that the Republicans spent only the $151,000 which the national committee sent them. A similar assumption is made with respect to the Democratic state committee figures for Missouri. Again, no mention is made of congressional and senatorial committee receipts or disbursements, although presumably these are included with the national committee accounts. The report also makes it appear that both parties ended the campaign with handsome surpluses, when such is not the case. Finally, Table XIII leads one to suppose that the contributions of over $5,000 listed there were made entirely "in behalf of presidential candidates." Again, such is not the case.

Enough has been said to establish the point that the Steiwer report's tabulations and deductions are not altogether accurate. One should be very careful to make tabulations which will check, and which will present all the essential facts. The report as it stands is over a million dollars wrong in its grand total of receipts, and one cannot say how many hundred thousand dollars wrong in expenditures, because it has failed to classify and tabulate the figures in the proper way. What other errors there may be cannot be checked. It is inaccurate to say that the Democratic national committee had net expenditures of $3,157,000, just as it is wrong to credit the Republican national committee with receipts of $5,715,000.

Even though the Steiwer report is inaccurate in its calculations, it contains much useful material which cannot be secured elsewhere. Above everything else, the committee has done a great service by collecting figures of state committee receipts and disbursements, and also figures of the financial transactions of numerous subsidiary committees. In fact, the report's chief contribution lies in its splendid tabulation of the receipts and expenditures of organizations which came into existence during the campaign to work with the two parties. The report shows clearly how necessary it is to centralize the responsibility for political expenditures, and until this is done, to scrutinize carefully the accounts of all these non-party committees. Again, the report contains a very useful table showing the number of large contributions, the size of the contributions, and the proportion which these various-sized contributions bear to the total sum raised. There are two tables which list the names of all persons who contributed $5,000 and over to the funds of the two parties. Two interesting, but rather speculative, tables show the per capita expenditures of the two parties with respect to total population and the votes cast.

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The Steiwer report now takes its place alongside the Kenyon and Borah reports. All of these documents contain valuable information which should be used by Congress in enacting comprehensive legislation to regulate the use of money in elections.

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University of Michigan.

Administrative Reorganization and the University of Minnesota. Those who have followed the progress of administrative reorganization in Minnesota will recall that the reorganization act in that state established a commission on administration and finance similar to the commission with the same name in Massachusetts.[1] Large powers of supervision over the financial affairs of the state are conferred. Among them is a provision that the state auditor may approve no warrant upon the state treasurer for an expenditure from an appropriation unless the object of the disbursement is one which has been approved by the commission. Every department, officer, agency, and institution is required to present for the commission's approval, each three months, an estimate of its needs for the following quarter.

The regents of the University of Minnesota, pursuant to the requirements of the act, had submitted to the commission for its approval in one of their quarterly estimates a request for authority to expend $40,000 to provide group insurance for the faculty and employees of the university. The commission declined to approve the item, on the ground that it might be taken as a precedent upon which to base demands for similar insurance for the employees of other state agencies. The regents were advised to apply to the legislature for specific authority. This they declined to do, as they claimed to have control of sufficient funds aside from legislative appropriations to carry the project through.[2] The regents employed actuaries to prepare a preliminary report on the form of insurance contract to be used. A voucher to pay for these services was presented to the state auditor, who refused to draw a warrant, alleging that under the reorganization act there were no funds available to meet the expenditure. The regents thereupon applied for a writ of mandamus to compel the issuance of a warrant. The district court issued the writ. The auditor appealed,

[1] Laws of 1925, chap. 426, art. 3.

[2] The regents expend annually over $8,500,000, of which $3,500,000 is specifically appropriated.

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and the issuance of the writ was upheld by the supreme court of the state.[3]

In the brief presented by counsel for the university before the supreme court of the state the regents claimed immunity from interference in the management of the financial affairs of the university, on three different grounds: (1) constitutional status of the board of regents, (2) statutory construction, and (3) unconstitutionality of the reorganization act. The court decided the case upon the first point alone, although it pointed out that the second was not sound. The third point was ignored. It is in this third point that the chief interest of the case lies for students of public administration, not because of any precedent established by the case, but because of the arguments of counsel for the regents, which it seems are cogent and which may form the basis for further litigation in which the points raised cannot be evaded.

This brief points out that the commission on administration and finance claims the power to make available to, or to deny to, the several state agencies moneys which the legislature has appropriated. In so far as the commission actually determines the amount which will be made available, it is exercising legislative power. Such power may not, under our constitutional system, be delegated to an administrative agency. On the other hand, if the appropriation be regarded as completely made by the legislature, then the commission, in refusing to allow the whole amount of the appropriation to be used, is exercising a veto power greater than that accorded to the governor by the state constitution, since he may only veto items, not reduce them. Such suggestions should afford food for thought for proponents of administrative reorganization. It should not be necessary to sacrifice established principles of constitutional government to secure the advantages of centralized financial control. Further efforts to provide more acceptable devices must be made.

The University of Minnesota has secured its freedom from statutory restraint. As a constitutional department, it has been held to be free from the supervision of the commission on administration and finance. But the victory has not been all gain. The governor, when informed of the decision of the supreme court, reminded the public that the university's territorial charter, which seemingly was revived by the decision, placed the institution under legislative control.

[3] State ex rel. University of Minnesota v. Chase (1928), 175 Minn. 259; 220 N. W. 951.

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During a long session, a legislative committee groped for some solution of the problem which would be acceptable to the administration as well as to the university. There was a fundamental difference of opinion between the upper and lower houses as to the propriety of the reorganization act, the former being inclined to oppose the governor's wishes and the latter showing a disposition to uphold them. The governor himself determined that the university should suffer for its temerity. The institution's appropriations were severely cut in the governor's budget. The appropriation first made was vetoed in its entirety. On the last night of the session a new bill carrying a reduced figure was passed. A sum of $300,000 per year for ten years for building purposes was lost through the veto, and the net amount granted was $30,000 less than the appropriation for 1927–28. The president has recommended an increase in tuition charges to meet a $300,000 deficiency in the appropriation finally made. Before adjournment, the two houses of the legislature met in joint session, as prescribed by the university's territorial charter, and elected a board of twelve regents, excluding the president, the governor, and the commissioner of education, who had been serving as regents ex-officio under a later act. An interim legislative commission of ten members was appointed to make a rather thorough study of the relation of the university to the legislative and executive branches of the state. The members of this commission are largely administration leaders, and the next two years promise interesting developments.

HARVEY WALKER.

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STATE CONSTITUTIONAL LAW IN 1928–1929*

OLIVER P. FIELD

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A. ADOPTION AND AMENDMENT OF CONSTITUTIONS

No new constitution was adopted in any state in 1928–29, and relatively few legal problems concerning the amending process were decided during the year. The South Carolina court upheld an amendment proposed by the legislature and ratified by the voters notwithstanding attacks based on the inclusion of several subjects in the resolution proposing the amendment, the failure of the officers charged with the preparation of the ballots to print the amendment in full, and the absence of the title of the amendment from the journals of the legislature, the title being entered on the journals only as part of the resolution proposing the amendment. Such a provision as that contained in Article III, Section 17, of the constitution of South Carolina providing that "every act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title," might well be held not to apply to resolutions proposing amendments to the constitution, but to be restricted in application to ordinary acts of legislation, thus distinguishing acts of legislation from constituent acts. The court did not consider this distinction, but settled the case on its merits, deciding that the resolution did not contain separate subjects, that the ballots need not contain the entire text of the amendment, and that it was sufficient if the resolution proposing the amendment containing the title was printed in the journals of the two houses.[1]

The constitution of South Carolina permits the supreme court of that state to call upon the judges of the circuit courts to sit with it when constitutional questions are being considered. Prior to a recent amendment, the circuit judges could be summoned when "any two of them" (referring to judges of the supreme court) so requested. An amendment designed to require the request of three of the supreme

* Cf. W. L. Godshall, "State Constitutional Development through Amendment in 1928," in this *Review*, vol. 23, p. 404. Cases decided after May 1, 1929, are not covered in the present article.

[1] Fleming v. Royall, 143 S. E. 162 (S. C. 1928).

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court judges was proposed by the legislature and ratified by the voters. However, in the portion of the resolution describing the proposed change the statement was made that the word "two" was to be stricken from the constitution at this point and the word "three" inserted, but in that part of the resolution describing the manner in which the amended section would read, "any of them" was printed instead of "three of them." The question presented to the court was whether the circuit judges could now be called to the aid of the supreme court at the request of a single judge, or whether the request of three judges of the supreme court was required. The court decided that the historical background of the proposed amendment and the general understanding of the bench, the bar, and the public made it clear that the legislature meant to propose and the people to ratify an amendment requiring the request of three judges instead of two.[2]

A Colorado case further defines the grounds for rejecting signatures on a petition initiating a constitutional amendment in that state,[3] and in State ex rel. Booth v. Hinkle[4] the supreme court of Washington held that the period for filing arguments for and against constitutional amendments proposed by the legislature should be a reasonable one, neither the constitution nor the statutes expressly covering the point. The court thought that it would be unreasonable to restrict the period for filing such arguments with the secretary of state to that specified in the statutes for amendments proposed by the initiative, because amendments proposed by the initiative would normally have attracted more attention on the part of the public than those proposed by the legislature.

B. STRUCTURE AND FUNCTIONS OF GOVERNMENT

1. Separation of Powers. The doctrine of the separation of powers may operate to restrain the legislature from delegating some of its own power to the administrative or judicial branches of the government. It may also operate to restrain the legislature from transferring a power properly belonging to the administrative department to the judicial department, and *vice versa*. An Idaho case[5] held that a board of land commissioners may be authorized to fix the salary of deputies upon recommendations made by the state forester. In California a

[2] Duncan v. Record Publishing Co., 143 S. E. 31 (S. C. 1927).
[3] Miller v. Armstrong, 270 Pac. 877 (Col. 1928).
[4] 269 Pac. 818 (Wash. 1928).
[5] Chambers v. McCollum, 272 Pac. 707 (Idaho 1928).

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statute thought unduly to restrict the power of the courts in admitting persons to the practice of law was declared invalid.[6]

Sometimes the exercise by the administrative branch of powers thought to be judicial in their nature causes the exercise of such powers to be challenged on the ground that it violates the doctrine of separation of powers. In Dickey v. Volker,[7] the supreme court of Missouri decided that the refusal of the attorney-general to institute legal action is not an exercise of judicial power.

The Idaho board of commissioners of the state bar was given the power by statute "to provide for the disciplining of its officers and the members of its committees in the event of refusal, neglect, failure or corrupt or wrongful performance of their respective duties." The statute granting the board this power was held unconstitutional on the ground that it gave to the board the judicial power of punishment.[8] In the course of its opinion the court said that the board could have been given power to conduct investigations which might be reported to a court, and that it might formulate certain rules and regulations governing its work, which, if adopted or approved by the supreme court, would be valid. Not all of the rules of the board had been so approved, and the court thought that the board could not be given the power to try a member of the bar and discipline him without action on the part of the judiciary at some stage in the proceeding.

Modern statutes concerning administration often encounter the objection that they include grants to administrative boards or officers of power to perform legislative functions. The problem in this class of cases often resolves itself into a question of how much discretion the legislature may intrust to administrative officers. The general principle is well established that the legislature must formulate the general policy to be followed, and that the administrative officer may be authorized to formulate rules relative to the details of the execution of the statute. The difficulty comes when this general principle is sought to be applied to specific statutes. Sometimes the general principle governing this type of case is formulated in the statement that the statute, when it leaves the legislature's hands, must be a complete statute, and that the administrative officer must not be given authority to fill in the missing portions of the law. This is only

[6] In re Cate, 273 Pac. 617 (Cal. D. C. App. 1928).
[7] 11 S. W. (2d) 278 (Mo. 1928).
[8] In re Edwards, 266 Pac. 665 (Idaho 1928).

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another way of stating that the legislature must indicate its policy with sufficient precision to satisfy the court that questions of policy thought to be so important that they should be determined by the legislature will not be left to the determination of administrative boards or officers.

Initiated measures apparently come within the rules governing the separation of powers in the same way as legislative acts. The Arizona constitution, Article XXII, Section 14, provides that any law which may be enacted by the legislature under this constitution may be enacted by the people under the initiative, and that any law which may not be enacted by the legislature under this constitution shall not be enacted by the people. An initiated statute gave to a board of control the power to "establish, maintain, or operate any manufacturing establishment or institution" whenever in the judgment of the board it should be for the best interest of the state to do so. This statute was held invalid as in conflict with the doctrine of the separation of powers.[9] The court thought that the statute was incomplete and could be made complete only by a determination on the part of the board as to whether the proposed business venture should be launched; and that question the court believed to be a legislative question of policy, the settlement of which could not be intrusted to an administrative board.

Statutes forbidding the operation of bus lines without a certificate of convenience obtained from a commission were held constitutional in Montana[10] and unconstitutional in Iowa.[11] The Montana court held that the state could control the use of the highways and that the test of "public convenience" was a sufficient guide for the commission to follow. The Iowa court, on the other hand, held that only the determination of facts could be intrusted to the commission. A decision by the commission, said the court, of the question whether public convenience and necessity required the issuance of a certificate of convenience is not a determination of existing facts, but rather a determination of future rights and duties. The formulation of rules for the future was held by the Iowa court to be a legislative function which could not be delegated to the commission.

Statutes giving boards or officers the power to pass upon the effect of drainage construction projects on the flow of, or the change of

[9] Tillotson v. Frohmiller, 271 Pac. 867 (Ariz. 1928).
[10] Northern Pac. Ry. v. Bennett, 272 Pac. 987 (Mont. 1928).
[11] Appeal of Beasley Bros., 202 N. W. 306 (Ia. 1928).

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courses of, streams;[12] to establish by-laws, rules, and regulations for the operation of a bridge;[13] to regulate the form of bonds to be given by banks;[14] and to promulgate rules and regulations not in conflict with the rules of a superior administrative board for the protection of the public health in a district,[15] were held constitutional. In each of them the courts felt that the legislative policy had been sufficiently indicated. The Maryland court, in Leonard v. Earle,[16] had before it a statute authorizing a board to grant licenses to individuals to gather oyster shells on condition that a payment to the state be made of at least ten per cent of the shells, or (at the discretion of the board) their equivalent in money, the market value as of a certain date to be used in calculating the money equivalent. The fact that the board was empowered to choose between these two conditions in granting the license was held not to invalidate the statute. The impracticability of requiring that the legislature decide the particular situations in which shells should be exacted and those in which their money equivalent should be required was emphasized by the court in its opinion. The Minnesota court reached a like decision in a case involving a statute authorizing the executive council to determine whether the state should proceed against a surety or against the bank as a private creditor in case a depositary of state funds became insolvent.[17]

A Kansas statute authorizing the executive council of that state to grant permission to take sand from river beds and to prescribe rules, terms, and regulations in the exercise of this licensing power, in addition to the power to fix the compensation to be paid to the state, was held valid.[18] Statutes involving the grant of a privilege of the type involved in this case, and in the case previously referred to concerning the taking of oyster shells, are usually construed more liberally with respect to the requirements of the separation of powers than statutes involving regulatory restrictions on businesses not operating at the sufferance of the state.

[12] Duck Island Hunting & Fishing Club v. Gillen Dock Co., 161 N. E. 300 (Ill. 1928).

[13] Klein v. City of Louisville, 6 S. W. (2d) 1104 (Ky. 1928).

[14] Moody v. Jones, 9 S. W. (2d) 446 (Tex. 1928).

[15] City of Ft. Smith v. Roberts, 9 S. W. (2d) 75 (Ark. 1928).

[16] 141 Atl. 714 (Md. 1928).

[17] In re Farmers State Bank of North Branch, 219 W. N. 916 (Minn. 1928).

[18] Consumers Sand Co. v. Executive Council of Kansas, 126 Kan. 233, 268 Pac. 123 (1928).

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A Washington statute granting broad rule-making power to the supreme court of the state was upheld in State ex rel. Foster-Wyman Lumber Co. v. Superior Court.[19] The formulation of such rules can be placed in the hands of the courts, and the constitutional provision (Article IV, Section 24) which states that the "judges of the Superior Court shall, from time to time, establish uniform rules for the government of superior courts" was held only to require that rules be uniform, and was not considered as restricting the power of the supreme court to formulate such rules in accordance with statutory authority. The incorporation of a road district may by statute be intrusted to a court[20] although it is the exercise of a legislative power. So, too, the Ohio court of common pleas may be authorized to permit highways to be constructed across railroad tracks, a hearing being provided for in the statute as to the necessity and convenience of such a crossing. The statute was held not to give the court the power to create the right to cross at any particular grade, because the statute itself created the right, whenever in a proper proceeding the court should determine that the conditions specified in the statute had been met. The function imposed on the court by this statute was held to be judicial rather than legislative.[21] The Illinois court, however, held that a board of which a county judge was a member could not be given the power to lay out a school district, or alter the lines of an established school district, because this was held to be the exercise of a legislative function. School district boundaries were not to be altered unless it was shown to be for the convenience of the public, but the court pointed out that there was nothing to compel the board to make the alteration even if public convenience demanded it. The court thought, therefore, that too much discretion was reposed in the board.[22]

A California statute authorized cities to enact zoning ordinances. The city of Stockton enacted such an ordinance and provided, among other things, that a permit for the erection of a business building might be issued if three-fourths of the adjacent landowners consented thereto, and if the city council should so order after a public hearing.

[19] State ex rel. Foster-Wyman Lumber Co. v. Superior Court, 267 Pac. 770 (Wash. 1928).

[20] State v. Hughesville Special Road District, 6 S. W. (2d) 594 (Mo. 1928).

[21] Columbus, Del. & Marion Electric Co. v. Bd. of County Commrs., 118 Oh. St. 501, 161 N. E. 538 (1928).

[22] People ex rel. Bensenville Community High School, 333 Ill. 430, 164 N. E. 696 (1928). But see In re Common School District, 222 N. W. 690 (S. D. 1928).

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This provision of the ordinance was challenged as delegating to the property owners power to decide whether the permit should be granted. While the court did not expressly decide that this contention was sound, because the final power to decide on granting the permit rested with the city council, the court did intimate that it might be unconstitutional—though it went on to say that even if it were invalid the provision was separable and the whole scheme would, therefore, not fall with it, even though this particular portion be deemed invalid.[23]

A North Carolina case raises the question whether a state board may be given the power to condemn land for the purpose of ceding it to the United States. The statute authorizing this procedure was assailed on the ground that it delegated to the national government the power of eminent domain. The statute was held valid on the ground that no delegation to the federal government had been established.[24]

2. The Judiciary. The courts continue to exercise their functions of reviewing the validity of legislative[25] and administrative[26] acts. In reviewing legislation, however, a court will not pass upon the constitutionality of a statute which has not as yet been enacted into law. This is true whether a bill is pending before the legislature or whether a measure is being introduced by initiative and referendum.[27] Fixing punishment is still regarded as a legislative function, and courts are not at liberty to impose punishment which is heavier than that prescribed by statute.[28]

In Eich v. Czervonko,[29] the Illinois court decided that a decree directing a master in chancery to make a deed transferring land in accordance with a judicial order did not constitute a delegation of judicial power. Statutes or decrees authorizing persons not holding

[23] City of Stockton v. Frisbie & Latta, 270 Pac. 270 (Cal. 1928).

[24] Hagood v. Daughton, 195 N. C. 811, 143 S. E. 841 (1928).

[25] See State ex rel. Carson v. Kozu, 270 Pac. 513 (Ore. 1928), suit to enjoin secretary of state from printing bill proposed by initiative.

[26] Weer v. Page, 141 Atl. 518 (Md. 1928), discussing conditions under which court will review action of officer rejecting application for permission to incorporate.

[27] See *supra* note 25.

[28] People v. Cary, 245 Ill. App. 100 (1927). See state v. McGinnis, 7 S. W. (2) 259 (Mo. 1928), holding that as long as the trial court sentence was within the penal statute the appellate court would not disturb. Also Fox v. Commonwealth, 161 N. E. 803 (Mass. 1928).

[29] 161 N. E. 865 (Ill. 1928).

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a judicial office to perform acts such as the issuance of writs or the making of deeds are generally regarded as valid when a judicial officer approves these acts before they become effective, unless some express constitutional provision forbids the delegation of such work to any but strictly judicial officers.

The doctrine of political questions as applied by state and federal courts represents a sort of judicial self-limitation. The doctrine is sometimes confused with that of the separation of powers on the one hand, and with that of judicial notice on the other. The doctrine differs from that of the separation of powers in that it is utilized by the courts to excuse themselves from deciding a question which has already been decided by one of the two political departments, the legislature or the executive. In applying the doctrine of political questions a court follows a decision by the executive or legislative department without determining whether the decision was or was not as the court would have made it had it taken the responsibility for deciding the question originally. So, for example, the question of the territorial extent of a state may be regarded as a proper subject for the determination of the executive branch of state government, and once that branch has decided that a given territory belongs to the state, the courts will follow that determination without question.[30] The doctrine of judicial notice dispenses with proof according to the ordinary rules of evidence. The doctrine of political questions does not affect the problem of proof at all. Judicial notice may be taken of some act of the executive. That act may bind the courts. The particular method in which the court is to learn what the act is raises a problem of evidence. Judicial notice is a method of ascertaining what action the political department has taken. Were the ordinary rules of evidence followed, formal proof, subject to the strict rules of admissibility, would be necessary to prove the nature of the executive action. Judicial notice dispenses with this.

Legislative attempts to restrict what the courts deem properly to be judicial functions met, during the past year, with the usual severe treatment at the hands of the courts. For example, in In re Cate,[31] the California court decided that the admission and reinstatement of attorneys to the practice of law is subject to the inherent power of the judiciary and that this power cannot be infringed upon by legislation. The court indicated three different attitudes which have been

[30] Curry v. State, 12 S. W. (2) 796 (Tex. Crim. App. 1928).
[31] In re Cate, 270 Pac. 968 (Cal. 1928).

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taken toward legislation regulating admission to the bar. One group of cases holds that the courts have inherent and exclusive power to regulate admission to the bar. A second group of cases holds that the courts will tolerate reasonable regulation established by the legislature on this subject, though such tolerance arises only from courtesy on the part of the courts. A third group of cases holds that the courts must follow reasonable rules prescribed by the legislature, but that unreasonable rules depriving the courts of their inherent power over admission to the bar will be disregarded. The determination of whether a legislative regulation is reasonable or not will, of course, be made by the courts. Courts tend to regard the power to admit, discipline, and disbar attorneys as a very important one, and they usually place considerable stress upon the fact that attorneys are officers of the court, and that judges are dependent to a great extent upon the honesty and efficiency of members of the bar.

Courts are also very jealous of their appellate jurisdiction and apparently resent legislative interference with it. If the constitution gives to an appellate court general appellate jurisdiction, the courts are likely to construe this to exclude legislative power to abridge or in any way interfere with this appellate jurisdiction or any of its incidents. The power to issue appropriate writs in the exercise of appellate jurisdiction cannot be restricted by legislation. It is not necessary that the use of such writs be authorized by statute. Appellate courts may use them as incidents to their appellate jurisdiction.[32] This is true not only as to writs, but also as to the objects of control, the inferior courts. Thus an Ohio case decides that Article IV, Section 6, of the state constitution, providing that "the courts of appeals shall have . . . . appellate jurisdiction in the trial of chancery cases," authorizes the court of appeals to take cases from a municipal court even though no statute expressly authorized appeals from this particular court to the court of appeals.[33] However, a Minnesota case[34] qualifies this view to some extent by holding that a violation of a city ordinance is not an offense against the state, but is, instead, an offense against the city. Therefore an appeal need not be allowed from the decision of such a case to the appellate courts of the state. Not only do the courts

[32] In re Albori, 272 Pac. 321 (Cal. D. C. App. 1928); Empire Investment Co. v. Hutchings, 144 S. E. 209 (Ga. 1928).

[33] Commonwealth Oil Co. v. Turk, 118 Oh. St. 273, 160 N. E. 856 (1928).

[34] State ex rel. Weich v. City of Red Wing, 175 Minn. 222, 220 N. W. 611 (1928).

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resent any legislative attempt to restrict their appellate jurisdiction, but they also view quite strictly statutes imposing duties upon them in connection with their appellate jurisdiction which are thought properly to belong to the inferior courts. A Mississippi statute authorizing the supreme court of that state to grant an extension of time for filing stenographic notes in a case coming up on appeal was held unconstitutional because stenographers of the lower courts are officers of those courts and not of the supreme court, and are, therefore, not subject to the jurisdiction of the latter court.[35]

Constitutional provisions continue to impede the legislature in its attempt to create new courts or to alter the jurisdiction of some of the existing courts. Some courts are more liberal than others in their interpretation of these constitutional limitations resting upon the legislature and restricting its power to establish new courts. In Texas, the legislature is authorized in Article v, Section 1, of the constitution, to establish such other courts as it may deem necessary. Section 22 of the same article restricts the power of the legislature to increase or diminish the jurisdiction of county courts in civil and criminal matters. In Section 16 of Article v the county courts are given the general jurisdiction of probate courts. A statute creating a special court was held invalid because the court was invested with probate jurisdiction. Section 16, alluded to above, was held to vest probate jurisdiction in the county courts exclusively, and such jurisdiction could, therefore, not be given to any other court.[36] The supreme court of Florida, however, refused to construe a somewhat similar constitutional provision vesting jurisdiction over a particular class of cases in a named court or class of courts as excluding the legislature from granting to other courts jurisdiction over this class of cases.[37]

State constitutions often contain provisions relating to the creation of judicial districts. Section 147 of the Alabama constitution was construed to forbid the creation of districts including less than one county, although one county could be made the basis of a judicial district if it fulfilled the constitutional requirements concerning population and wealth.[38] In Messengil v. City of Clovis,[39] the New Mexico court held that an oral request on the part of one judge that a judge

[35] State v. White, 119 So. 807 (Miss. 1929).
[36] State v. Gillette's Estate, 10 S. W. (2) 784 (Tex. Comm. of App. 1928).
[37] State v. Sullivan, 116 So. 255 (Fla. 1928).
[38] In re Opinions of Justices, 117 So. 50 (Ala. 1928).
[39] 267 Pac. 70 (N. Mex. 1928).

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from another district hold court for him was sufficient to comply with a constitutional provision authorizing any district judge to hold court in any county at the request of the judge of such district, although the supreme court rules provided that a formal order should have been entered before the change was actually made. In Minnesota a judge may not try motions outside of his district,[40] but in Oklahoma it was held that district judges may be transferred to other districts than their own, particularly if their work in such other districts is in connection with a special court. Such a transfer of the district judges was held not to violate Article II, Section 11, of the Oklahoma constitution, which provides that every person elected or appointed to office shall give personal attention to his official duties.[41]

Section 28 of the Vermont constitution provides that justice shall be administered impartially by the courts of that state. A trial judge made the statement in a case that no evidence which could be introduced would change his mind; that his mind on the case had been made up. The statutory disqualifications for judges did not include bias. The supreme court of Vermont held, in Leonard v. Willcox, that such bias as was manifested in this case would disqualify the judge, and that the constitutional provision referred to was self-enacting, no statute being required to establish bias as a disqualification.[42] A Texas statute gave to the justices of the peace fees only if the accused was convicted in a criminal case. No appeal to the supreme court was permitted unless the case involved a fine of $100. The accused in Ex parte Kelley was fined one dollar and taxed costs amounting to $23.35. Three dollars and eighty-five cents of this amount was for the justice of the peace. Article V, Section 11, of the Texas constitution disqualifies judges who are interested parties, and this was held to disqualify the justice in this case, and the statute was held invalid.[43] In connection with the qualifications of judges, the case of Grogan v. Robinson[44] might be mentioned. Two attorneys agreed that another attorney should act as a special judge, the regular judge being called out of town, but not being disqualified. The suit was a civil one, and the loser challenged the right of the special judge to act in this case. The Texas court of civil appeals held that the judgment was of no effect—that the constitution specified the conditions under which

[40] State ex rel. Byram v. Johnson, 173 Minn. 271, 217 N.W. 351 (1927).
[41] State ex rel. Babb v. Mathews, 273 Pac. 352 (Okla. 1928).
[42] Leonard v. Willcox, 142 Atl. 762 (Vt. 1928).
[43] Ex parte Kelly, 10 S.W. (2) 728 (Tex. Crim. App. 1928).

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special judges might be chosen, and that, these conditions not being present in this case, the attorneys were not at liberty to agree upon a special judge. Special judges could be chosen only when the regular judges were disqualified.

Kentucky was apparently the twelfth state to establish a judicial council. A statute providing for the council was held valid in Coleman v. Hurst.[45] Numerous objections were raised. Among the points decided by the court were: (1) that the statute did not unconstitutionally raise the salaries of the members of the council who were already judges, because their added compensation was for the performance of new duties instead of for the performance of their already existing judicial duties; (2) that the office of judge and that of a member of the council were not incompatible within the meaning of the constitution; and (3) that it was not necessary that all of the members receive the same compensation. Curiously, $5,000 seems to be the maximum salary which can be paid to the judges of Kentucky courts, the constitution expressly fixing that sum as a maximum salary for state officers other than the governor.

Contempt of Court. Several cases of contempt of court came before the highest tribunals of the states during the year. Some of them involved direct contempt, and others indirect contempt. Sometimes contempts are classified as those which touch the dignity of the court and those which affect the interests of private litigants.[46] Refusing to testify before a grand jury when complete immunity from prosecution on the basis of evidence presented to the grand jury was guaranteed by statute;[47] refusal to pay alimony in accordance with a judicial decree;[48] refusal to deliver custody of a child in accordance with a similar decree[49]—all these were held to constitute contempt of court. In Pace v. State,[50] the husband of one of the witnesses in a damage suit assaulted one of the attorneys, who, in cross examination, made out his wife to be "a liar." The assault did not take place in the court room, but occurred in a hotel while the case was still pending before the court on a motion for retrial. This was held to constitute contempt of court. A flagrant attempt at cheating in a bar examination

[44] 8 S.W. (2) 571 (Tex. Civ. App. 1928).
[45] 11 S.W. (2) 133 (Ky. 1928).
[46] Roanoke Waterworks Co. v. Roanoke Glass Co., 144 S.E. 460 (Va. 1928).
[47] Baker v. State, 5 S.W. (2) 337 (Ark. 1928).
[48] Plankers v. Plankers, 220 N.W. 414 (Minn. 1928).
[49] In re Burns, 271 Pac. 439 (Mont. 1928).
[50] Pace v. State, 7 S.W. (2) 29 (Ark. 1928).

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occurred in Ohio recently, and in State ex rel. Turner v. Albin[51] the supreme court of the state declared not only the candidates in the examination to be guilty of contempt, but also those who conspired with them in the scheme for imposing upon the court. The court declared that an attempt to commit a fraud upon the court is sufficient to constitute contempt.

Judges continue to be rather severe toward criticisms of their work and of their efficiency and motives in performing their duties. In Jones v. State,[52] the Georgia court of appeals seemed to assume a bit hastily that the course of justice would be impeded and the court unjustifiably embarrassed and defamed by a petition presented to a trial judge alleging that he had held secret conferences with opposing counsel and that the case had been unjustifiably delayed, and stating that the petitioner felt that he would not receive a fair trial in this particular court. The petitioner asked, therefore, that the trial judge consider whether he was not disqualified to try the case. The person declared to be in contempt in this case was a son of a woman who was one of the parties to a suit. The son had urged his mother and the attorney to present the petition to the trial court. The attorney was also disciplined in contempt proceedings. Perhaps criticism against a decision such as that just mentioned should not be too hastily indulged in, but it does seem that many courts are over-sensitive on these matters and quick to see in them unworthy imputations upon the motives of the judge concerned.

Two significant cases involving contempt of court through publication or public statement occurred in Michigan and Indiana. The Michigan case, Campbell v. Jeffries,[53] turned on the publication of a newspaper article charging that a particular case had, from unworthy motives on the part of the court, been rushed through to decision while many other cases were being handled in a slow and dilatory manner. Among some of the more objectionable statements occurring in the article were: "This case smells to Heaven," and "The manner in which the case was rushed through court by the outgoing administration is hardly understandable." Concerning the article, the supreme court of Michigan said: "Neither refinement nor discussion is necessary to demonstrate that the interview published is contemptuous. It is so on its face. The language tends to degrade the

[51] State ex rel. Turner v. Albin, 118 Oh. St. 527, 161 N.E. 792 (1928).
[52] Jones v. State, 145 S.E. 914 (Ga. App. 1928).
[53] Campbell v. Jeffries, 244 Mich. 145, 161 N.W. 138 (1928).

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court and to embarrass the administration of justice. It charges the court with participation in conduct so vile and so corrupt that it 'smells to Heaven.'" A more doubtful decision, if the emotional element involved in the case be eliminated, is that of the Indiana supreme court in State v. Shumaker.[54] Shumaker and others publicly criticized the court for its attitude in connection with the enforcement of the liquor laws. He was declared to be in contempt of court, and was fined $250 and sentenced to sixty days on the state farm. The governor pardoned him on condition that he pay the fine. The supreme court held, however, that the governor was without power to pardon for the contempt, and declared that the term "offense" as used in the pardon clause of the Indiana constitution does not apply to proceedings for contempt of court. These proceedings, said the court, are not criminal in their nature. Offenses referred to in the pardon clause include only criminal offenses, and only those can be pardoned. In view of the statement of the court that the power to punish for contempt is inherent in constitutional courts, and that proceedings in contempt to save the court from libelous, degrading, and defamatory conduct or statements against the court cannot be limited by legislative act, one wonders whether the punitive element in a proceeding of this kind is not its dominating characteristic. The court really avoided deciding whether this was an unwarranted interference by the executive with the judicial power by deciding the case on the meaning of "offense." But one cannot read the decision without feeling that the court would have been willing to decide that the executive was without power to pardon for this type of contempt.

It has been held that the legislature may regulate the exercise of the power to punish for contempt of court, but that it may not abridge the power or unreasonably burden it.[55] The power to punish for contempt is repeatedly declared to be inherent in courts of record or constitutional courts,[56] and in Ohio the failure of the legislature to impose penalties for particular types of contempts was held not to be an obstacle to the judicial imposition of penalties for contempt.[57] Sometimes the courts phrase the power of the legislature with respect to contempts in a statement to the effect that the legislature may limit the punishment to be imposed for contempt, but may not define

[54] 164 N.E. 408 (Ind. 1928).
[55] State ex rel. Turner v. Albin, 118 Oh. St. 527, 161 N.E. 792 (1928).
[56] See cases cited in notes 50–55.
[57] See case cited in note 51.

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contempts, even in the presence of a constitutional provision that the power to punish for contempt shall be limited by the legislature.

Minnesota has held that the provisions of the penal code do not apply to contempt proceedings,[58] but the Montana court takes the view that proceedings in contempt are criminal for the purposes of requiring substantial evidence for conviction.[59] The Oklahoma bill of rights[60] provides that "in no case shall a penalty or punishment be imposed for contempt until an opportunity to be heard is given." This was held to restrain the court from punishing even direct contempt in the absence of a hearing, although it was said to be sufficient to ask the defendant if he thought any legal cause existed why he should not be declared guilty of contempt.[61] Good faith, the fact that the offender was acting on advice of counsel, and other mitigating circumstances were taken into consideration by several of the courts reducing the penalities imposed by trial judges. For example, in Baker v. State,[62] the penalty was reduced from seven months to two months, and the same court in another case eliminated a jail sentence, leaving only a fine.[63]

3. Administration. During the past year the supreme court of Minnesota has had occasion to construe the reorganization act of 1925 and to pass upon its scope. In 1925 the court said that the railroad and warehouse commission came within the phrase, "department or agency," and was, therefore, subject to the pre-audit provisions of the statute.[64] In State ex rel. Mergens v. Babcock,[65] the court held that the commission on administration and finance had the power to supervise and control the making of contracts by the highway department, thereby subjecting that department to the general financial control of the commission.

[58] *Supra*, note 52.

[59] Plankers v. Plankers, 220 N.W. 414 (Minn. 1928).

[60] In re Burns, 271 Pac. 439 (Mont. 1929).

[61] Moore v. State, 272 Pac. 1032 (Okla. Crim. App. 1928).

[62] Baker v. State, 5 S.W. (2) 337 (Ark. 1928).

[63] Pace v. State, 7 S.W. (2) 29 (Ark. 1928).

[64] State ex rel. Yapp v. Chase, 265 Minn. 268, 206 N.W. 396 (1925). J. S. Young "Reorganization of the Administrative Branch of the Minnesota Government," this *Review*, vol. 20, p. 69, discusses the 1925 reorganization statute and the powers and functions of the commission on administration and finance.

[65] 175 Minn. 503, 222 N.W. 285 (1928). See also, to the same effect, State ex rel. Weaver v. Babcock, 175 Minn. 590, 220 N.W. 287 (1928).

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In State ex rel. University of Minnesota v. Chase,[66] the University of Minnesota contended that it was not subject to the supervision and control of the commission on administration and finance. Article VIII, Section 4, of the Minnesota constitution perpetuated to the university all rights, endowments, immunities, and franchises previously held by it. The specific question which the court had to decide was whether a mandamus should issue to compel the auditor to approve and issue a warrant for the payment of an item of expenditure authorized by the regents of the university. The auditor contended that under the reorganization act his duty was to refuse payment unless the item had been approved by the commission on administration and finance. The court held that mandamus should issue to compel the issuance of the warrant. The university was thereby declared not to be under the control of the commission. The court reasoned that the university is an agency of the state, and is, therefore, within the terms of the reorganization act. The regents of the university had, however, been given the power to govern and control university affairs and had been constituted a corporate body by a territorial statute. This corporate status, with its incidental power of government and control, were perpetuated to the university, that is, to the board of regents, by Article VIII, Section 4, of the state constitution. This power to manage the affairs of the university could not be taken away from the regents by the legislature and placed in the hands of an administrative or executive body such as the commission on administration and finance. The commission, it should be remembered, is only an agency for carrying out the will of the governor under the reorganization act of 1925. That statute attempted to give to the commission some of this power which had been "perpetuated" to the regents. To this extent, the statute was declared unconstitutional; but the statute as a whole was not thereby rendered invalid. All that this case decides, therefore, is that the legislature cannot give to an executive officer or group of officers any of the governing power perpetuated to the regents of the university. The opinion contains considerable discussion as to the relation of the legislature to the university, but this discussion, in addition to being dictum, is confused and difficult to understand. In general, the court seems to suggest that the power of the board of regents is executive in its nature; that this power cannot be taken away from the regents; that the legislature may not by law regulate

[66] 175 Minn. 259, 220 N.W. 951 (1928).

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matters of academic policy or administration; but that the legislature may, in appropriating money for the university, attach certain types of conditions to these grants. The court expressly limits its decision to the precise issue raised by the case, so that the problem of the relation of the legislature to the university under Article VIII, Section 4, still remains to be settled.

State v. Halladay[67] was a South Dakota case involving the governor's power of appointment and the senate's power of confirmation. The appointment was made on July 1, while the senate was not in session, and notice of the appointment was filed with the secretary of state. On January 4, the senate met and a new governor came into office. On January 7, the senate confirmed the appointment which had been made on July 1, the senate having learned of the appointment from the office of the secretary of state. The new governor, in the following December, made a new appointment to the office. The conflicting claims to the office were tested in a quo warranto proceeding. The court held that the office of governor is a continuing one, so that the senatorial confirmation on January 7 of an appointment made by the previous incumbent of the governor's office was valid, and the lack of formal notice of the appointment from the secretary of state was not fatal. The court also held that a statute providing that appointees during vacancies should hold office until the next session of the legislature did not apply to the vacancy in this case.

The Minnesota case of State ex rel. Putnam v. Holm[68] decides that the three days (Sundays excepted) allowed the governor for vetoing bills while the legislature is still in session does not exclude holidays; that only a final adjournment is referred to when the constitution mentions adjournment as preventing a return of a bill; and that the governor need not return a bill to the house in which it originated while the house is in session, but may return it even though the two houses are temporarily adjourned. For purposes of returning bills to the legislature, legislative officers and members alike are agents to whom the governor may give the bill.

Boykin v. State Highway Department[69] illustrates the detailed specifications often imposed by statute on state highway depart-

[67] 219 N.W. 125 (S. D. 1928).

[68] State ex rel. Putnam v. Holm, 172 Minn. 162 (1927). This case contains a good discussion of cases from other states and distinguishes many of them on the basis of the phraseology employed in the various constitutional provisions governing the veto.

[69] 144 S.E. 227 (S. C. 1928).

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ments. When highways are located by statute, the department has practically no control over the subject and the courts are slow to permit any variation from the routes designated by the legislature.

The Indiana industrial board was denied the power to pass upon the validity of a statute in connection with its work. The court declared that the board is a part of the executive department, and cannot, therefore, pass upon the validity or invalidity of a statute. Any decision of the board on that question cannot be brought up on appeal to a court. The administrative branch of the government should assume the statute to be constitutional until a court of competent jurisdiction has declared it not to be so.[70]

Pardon. The surrender by one state of a fugitive from justice to another state does not constitute a pardon for any crimes which the fugitive may have committed against the laws of the surrendering state.[71] Several conditional pardons came up for review during the past year. In Texas the power of pardon was said in one case to be inherent in the governor.[72] In New York a conditional pardon was held permissible, but the breach of the condition must be shown before the prisoner can again be committed. [73] An interesting condition is that imposed by the governor of Missouri to the effect that the prisoner stay out of a named county.[74] The Missouri court held in this connection that even though no statutory procedure is provided, the pardoned person is entitled to a hearing on the question of whether or not he has broken the condition. A Texas[75] case also holds that a hearing must be accorded the pardoned person before he can again be committed for breach of the condition, but that a hearing on habeas corpus is sufficient to fulfill the requirement. The condition imposed in this case was that the convicted person go to an insane hospital instead of to jail. In Oklahoma[76] it was held that a parole also is an act of grace, and that the governor may order the prisoner committed for breach of condition. The power to pardon was held in Iowa to include the power to suspend sentence, and this function may not be performed by the judiciary.[77]

[70] Marmon Motor Car Company v. Sparks, 161 N.E. 647 (Ind. 1928).
[71] Ex parte Youatler, 268 Pac. 423 (Okla. 1928).
[72] Ex parte Gore, 4 S.W. (2) 39 (Tex. 1928).
[73] People v. Jennings, 248 N. Y. 46, 161 N.E. 326 (1928).
[74] Ex parte Strauss, 7 S.W. (2) 1000 (Mo. 1928).
[75] Ex parte Davenport, 7 S.W. (2) 589 (Tex. 1928).
[76] Ex parte Butler, 269 Pac. 786 (Okla. 1928).
[77] State v Hamilton, 220 N.W. 313 (Ia. 1928).

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4. The Legislature. The Illinois reapportionment situation gave rise to another case in 1928.[78] In Fergus v. Kinney,[79] a taxpayer sought an injunction to stop the payment of salaries to legislators on the ground that they had not been elected from proper districts, because no new apportionment had been made for more than ten years. The injunction was denied, the court holding that while the duty to apportion was mandatory and continuing, the court could not enforce that duty upon the legislature, either by direct action such as mandamus or by indirect action such as injunction. The claim that the legislature which was about to assemble was not a *de jure* body was denied by the court, and was turned back upon the petitioner in the form of an argument for denying the relief asked; for if the legislature did not have proper legal foundations, the lack of those foundations would furnish an argument against compelling that body to pass an apportionment act, its acts not being legal if the body was not legal.[80]

Each house of the legislature is usually constituted the final judge of the qualifications, returns, and election of its own members. This deprives the courts of jurisdiction to try title to a legislative seat on quo warranto proceedings.[81] The courts may sometimes pass upon the qualifications of candidates for legislative seats when the question is raised before the election is held and the individual admitted to membership by action of the legislative body. In Louisiana,[82] residence in the district from which the legislator is elected is required, but the court held that actual physical presence in the district is not necessary to fulfill this requirement. Due to the force of precedent, the court felt compelled to regard as sufficient the reservation of some rooms in a former home of the candidate elected from the district, even though the house had been sold, and although the candidate had his business in another district and lived most of the time with his family in a city located outside of the district.

[78] For a discussion of the situation in Illinois, see Mott, "Reapportionment in Illinois," this *Review*, vol. 21, p. 598.

[79] 333 Ill. 437, 164 N.E. 665 (1928).

[80] See Boggs v. Jordan, 267 Pac. 696 (Cal. 1928), for an attempt to correct the apparent inequalities existing in legislative representation in California.

[81] Rainey v. Taylor, 143 S.E. 383 (Ga. 1928).

[82] Leopold v. Ninth Senatorial District Democratic Committee, 8 La. App. 232 (1927). See also State ex rel. Beck v. Erickson, 221 N. W. 245 (Minn. 1928), the name of the candidate for the legislature not to be printed on the ballot because he had not lived in the district a sufficient length of time.

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The practice of some legislative bodies of voting themselves bonuses has occasionally given rise to litigation. The 1927 legislature of Tennessee voted a bonus of $750 to each member as "official expenses." While the four-dollar per diem compensation provided for in the Tennessee constitution may cause one to sympathize to some extent with the action of the legislature, the Tennessee court was no doubt quite correct in granting an injunction restraining the payment of the bonus. The sum quite evidently had no relation to actual expenses, and it was a bonus of equal size for all members of the legislature.[83] A member of a senate investigating committee in Nebraska was denied compensation for services performed in the capacity of a private accountant for the committee.[84] The expenses allowed to the members of the committee were all that they could claim in addition to their legislative salaries.

A few cases involving legislative procedure will serve to illustrate the types of situations coming before the courts involving constitutional questions of procedure. In People v. Guido,[85] the California court held that a statute enacted by referendum can later be amended by a statute enacted by the legislature. The Kentucky provision[86] that no law shall be "revised, amended," or extended by reference to title only, was held not to apply to repeals. In Arkansas, Article v, Section 29, provides that money is to be drawn from the treasury only on a specific appropriation with the purpose stated in the law and the maximum amount specified which may be drawn under the statute. A statute failing to specify the maximum amount was declared invalid.[87] A Florida case[88] maintains the view that the court will not go beyond the journal entry to learn whether the reading requirements of the constitution have been fulfilled. In Maryland the legislative declaration that an emergency exists, for purposes of putting a statute into effect immediately, was held to be conclusive upon the court.[89]

Chapter 53, Section 19, of the General Laws of Massachusetts, as amended by Chapter 97 of the Laws of 1925, provides for printing

[83] Peay v. Nolan, 7 S.W. (2) 815 (Tenn. 1928).
[84] In re Wilkins, 219 N.W. 9 (Neb. 1928).
[85] People v. Guido, 269 (Cal. D. C. App. 1928).
[86] Gross v. Fiscall Court, 9 S.W. (2) 1006 (Ky. 1928).
[87] Lepanto Special School District v. Cone, 5 S.W. (2) 332 (Ark. 1928).
[88] Jackson Lmbr. Co. v. Walton County, 116 So. 771 (Fla. 1928).
[89] Culpet v. Commrs. of Chesterton, 141 Atl. 410 (Md. 1928).

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proposed instructions to congressmen on the state ballots. The secretary of state and attorney-general are to draft the proposition in simple terms, and the attorney-general is to determine whether it involves a question of public policy for Massachusetts. The petition proposing the instruction is to be signed by two hundred voters in a representative district, or twelve hundred voters in a senatorial district. The attorney-general decided that an instruction to repeal the Eighteenth Amendment involves a question of public policy for Massachusetts, and could therefore be put on the ballot for approval or disapproval by the voters. The determination of the attorney-general was held to be final under the statute.[90] In Oklahoma, initiated measures are to be referred to the voters by the governor, and they become law if approved by a "majority of the votes cast in such election." This was construed to mean a majority of the votes cast on this particular question.[91]

5. Taxation and Finance. A state constitutional debt limit does not apply where provision is made for a service charge to pay off bonds, and this has been held to be true even though there is a possibility that funds may be drawn from the treasury to pay the bonds.[92] Article IX, Section 4, of the Pennsylvania constitution, after stating certain restrictions on state debts, provides that "the general assembly, irrespective of any debt, may authorize the state to issue bonds to the amount of fifty millions of dollars for the purpose of improving and rebuilding the highways of the commonwealth." In 1923, one hundred millions was substituted for fifty millions. Bonds to the amount of fifty million dollars were issued in 1918, and in 1923 an additional fifty million. Subsequently, three million dollars' worth of bonds were retired and cancelled. A taxpayer sought an injunction to stop the issuance of three million dollars' worth of bonds to take the place of those retired. The court held that only one hundred million dollars' worth of bonds could be issued. The legislature could not authorize the issuance of the three million dollars in addition to this. The constitution did not authorize indefinite continuance of bond issues for highways. Once the one hundred million dollars' worth of bonds had been issued, the power was exhausted under this provision.[93] The

[90] Thompson v. Secretary of Commonwealth, 163 N.E. 192 (Mass. 1928).

[91] State ex rel. Babb v. Mathews, 273 Pac. 352 (Okla. 1928).

[92] Alabama State Bridge Corporation v. Smith, 116 So. 695 (Ala. 1928); Klein v. City of Louisville, 224 Ky. 624, 6 S.W. (2) 1104 (1928).

[93] Montgomery v. Martin, 143 Atl. 505 (Pa. 1928).

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recent Iowa road bond act was held unconstitutional on several counts, one of the more serious being that provision was not made for paying the debt within twenty years.[94]

An arrangement whereby the board of regents leased university lands to a private corporation, the members of which were composed of university representatives, for the purpose of building dormitories and a university "union," on condition that the buildings, when erected, be leased to the regents with permission to the regents to pay for the buildings out of earnings, was upheld in Loomis v. Callahan.[95] The general credit of the state was not pledged by this arrangement, and therefore the state debt limit was not exceeded. The Texas legislature may authorize the sale of gas and oil on university lands, on the theory that, even though they belong to a permanent school fund, the proceeds of the sale, when returned to the fund, are the equivalent of the oil and gas.[96] The 1925 legislature in Michigan altered the basis for apportioning the primary school fund to the schools of the state, and the new distribution was held unconstitutional because contrary to Article XI, Section 9, which in the view of the court fixed as the basis of distribution the number of children in the district.[97] The state board of education in Montana is given general control and supervision over the university and various state educational institutions. This was held not to limit the legislature in making regulations for schools, and Chapter 77 of the Laws of 1917 authorizing school trustees to expend money for transportation of pupils was upheld, the residents of the district being given an appeal from the decision of the trustees to the state board of education.[98]

The state may compensate persons having moral claims against it. So, if individuals borrowed money from the state for purposes of constructing projects under the supervision of state officers, and through the negligence of those officers the money was largely wasted, the state legislature may waive a part of the state's claim against the borrowers.[99] In a Kentucky case a contractor building a highway under a contract with the highway commission was held immune from suit by a landowner for damages done in the course of construct-

[94] State v. Executive Council, 222 N.W. 737 (Ia. 1929).
[95] Loomis v. Callahan, 220 N.W. 816 (Wis. 1928).
[96] Theisen v. Robison, 8 S.W. (2) 646 (Tex Sup. Ct. 1928).
[97] Bd. of Educ. of Detroit v. Fuller, 242 Mich. 186, 218 N.W. 764 (1928).
[98] State ex rel. Stephens v. Keaster, 266 Pac. 387 (Mont. 1928).
[99] Udall v. State Loan Bd., 273 Pac. 721 (Ariz. 1929).

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ing the highway in accordance with plans formulated by the commission, no negligence on the part of the contractor being shown. The court said in its opinion that if negligence had been shown the contractor would be liable.[100] Occasionally a case arises in which an officer pays out state money under the authority of an unconstitutional statute. Can the state then recover the money from the individual to whom it has been paid? In State v. Clements,[101] a trial court issued a writ of mandamus to the state auditor to pay a claim. The auditor paid the claim, but subsequently the statute authorizing the payment was declared unconstitutional. A statute authorized suit by the state to recover money wrongfully paid to an individual. The court held that suit could not be maintained by the state under the statute. The trial court had jurisdiction over the parties and subject-matter when it issued the writ of mandamus, and, the writ being fair on its face, the money was properly paid out by the auditor. The fact that the statute was unconstitutional was immaterial, in the opinion of the court, because of the intervening judicial process.

Taxation. The Florida court discussed the distinction between a fee and a tax and held that a fee is a sum required for services, while a tax is a burden or charge imposed to raise money for some public purpose.[102] In Alabama, the collection of tolls for the use of a bridge built by a state-owned corporation was held not to be the equivalent of taxation.[103] The power of taxation cannot be delegated to an administrative body without any legislative limitation being placed on the rates and amounts which may be imposed by the administrative officials.[104] Absolute uniformity in taxation is not possible, nor is it required by constitutional provisions imposing the rule of uniformity.[105] The legislature may designate dividends from stock as one factor in fixing the taxable value of stocks, classification of stocks on a different basis from other securities being permissible.[106] A license tax on chain stores of fifty dollars for each store, applicable to owners of more than six

[100] Hunt-Forbes Construction Co. v. Robinson, 12 S.E. (2) 303 (Ky. 1928).
[101] State v. Clements, 117 So. 296 (Ala. 1928).
[102] Flood, etc., v. State ex rel. Homland, 117 So. 285 (Fla. 1928).
[103] Alabama State Bridge Corp. v. Smith, 116 So. 695 (Ala. 1928).
[104] Merriman v. Hutchinson, 116 So. 271 (Fla. 1928).
[105] Clerk v. City of Burlington, 143 Atl. 677 (Vt. 1928). See also Fraser v. Vermillion Mining Co., 221 N.W. 13 (Minn 1928), on mining royalty tax, held uniform; Porter v. First Nat. Bk. of Panama City, 119 So. 130 (Fla. 1928); State ex rel. Mo. State Life Ins. Co. v. Gehner, 8 S.W. (2) 1068 (Mo. 1928).
[106] Clark v. City of Burlington, 143 Atl. 677 (Vt. 1928).

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stores, was held invalid in North Carolina.[107] The uniformity rule does not apply to occupational taxes in Arizona.[108] Special assessments and benefits as a basis for them, when determined by direct legislative action, must be very arbitrary before the courts will overturn them; while if they are determined by administrative officers, the courts are not so lenient. This distinction was drawn in the Florida case of Martin v. Dade Muck Land Co.[109] In Missouri, a special tax does not come within the rules governing exemption from taxation;[110] and in Louisiana it was held that the exemption from taxation of farm products applies only to products in the hands of the producers, not in the hands of the purchasers.[111]

6. Local Government. The complete power of the state legislature over local communities, in the absence of specific constitutional limitations on the particular subject to be dealt with, is illustrated by an Iowa case in which the state legislature was permitted to divert from the county to the state sinking fund interest money paid on county funds.[112] An Illinois case upholds the action of the legislature in withdrawing from the local community control over street railways.[113] However, Article IX, Section 28, of the Michigan constitution was held to forbid the legislature to authorize the vacation of alleys by a court on petition of two-thirds of abutting property owners. This withdrew from the city its right to a reasonable control of streets and alleys. No opportunity for hearing was granted by the statute.[114]

A curative statute establishing a boundary line between two counties is not invalid under Article IX, Section 1, Subd. 3, of the Texas constitution, providing that no territory shall be taken from one county and given to another unless the people of both counties vote on the proposal.[115] The attempt, in Oklahoma, to abolish township officers in forty-nine counties, twenty-eight counties retaining them, failed. The statute encountered the obstacle of the special-legislation provi-

[107] Home Accident Ins. Co. v. Industrial Comm., 269 Pac. 501 (Ariz. 1928).

[108] Great Atlantic & Pacific Tea Co. v. Daughton, 196 N. C. 145, 144 S.E. 701 (1928).

[109] Martin v. Dade Muck Land Co., 116 So. 448 (Fla. 1928).

[110] State ex rel. Gentry v. Curtis, 4 S.W. (2) 467 (Mo. 1928).

[111] Penick v. Ford, 116 So. 572 (La. 1928).

[112] Scott County v. Johnson, 222 N.W. 378 (1928).

[113] Chicago, North Shore & Milw. Ry. v. Chicago, 331 Ill. 360, 163 N.E. 141 (1928).

[114] In re Hawkins, 222 N.W. 108 (Mich. 1928).

[115] Hunt County v. Rains County, 7 S.W. (2) 648 (Tex. Civ. App. 1927).

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sion in the state constitution.[116] The California legislature is empowered in Article XI, Section 5, to regulate the compensation of county officers in proportion to their duties, and for this purpose it may classify the counties by population. A statute reducing the compensation of county surveyors in counties of the seventh class from $2,400 to $120 per annum is in conflict with this provision, the duties of the surveyor remaining the same.[117] A taxpayer in Texas failed in his application for an injunction to stop the division of a county into precincts by the commissioners' court of the county, his contention being that certain road funds would be lost through the proposed districting. The work of the commissioners' court will be presumed to have been done in accordance with law, and it was shown in this case that the new districting would be more convenient for the people than the old.[118]

C. RELATION OF GOVERNMENT TO THE INDIVIDUAL

1. Suffrage and elections. A statute authorizing removal from the registration list of the names of persons who have moved out of the election district, or become disqualified for other reasons, and which provides that notice of the removal be sent to the voter's last address in the district, was upheld in New Jersey.[119] An Oklahoma statute authorizing the issuance of a certificate of nomination to unopposed candidates was upheld under a constitutional provision granting to the legislature power to establish a primary system.[120] A federal district court for Texas sustained a party rule which permitted only white persons to vote in party primaries, the legislature having apparently succeeded in evading the United States Supreme Court decision which held that colored persons could not by statute be excluded from participation in primaries, following the lead of Alabama, Florida, and a few other states.[121] In Rhode Island, a statute providing

[116] Hudgins v. Foster, 267 Pac. 645 (Okla. 1928); Roberts v. Ledgerwood, 272 Pac. 448 (Okla. 1928).

[117] Butler v. Williams, 270 Pac. 697 (Cal. Dist. Ct. of App. 1928).

[118] Ward v. Bond, 10 S.W. (2) 590 (Tex. Civ. App. 1928).

[119] In re Freeholders, 143 Atl. 536 (N. J. 1928).

[120] Dancy v. Peebly, 270 Pac. 311 (Okla. 1928).

[121] Grigsby v. Harris, 27 F. (2d) 942 (D. C. Tex. 1928). Commenting on the action of some of the southern states following the decision overturning the white primary law, Professors Ogg and Ray state, in their *Introduction to American Government* (3rd ed., 1928), p. 699: "Not to be frustrated, however, the Texas legislature, which happened to be in session when this decision was announced, forthwith passed a new 'white primary' law giving every political

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for a maximum exemption from taxation of $1,000 for patriotic services was held not to dispense with the necessity of paying personal property taxes one year preceding the election. The voter can avail himself of the exemption so far as the ownership of real estate is concerned, because the ownership of the property, not the payment of taxes, is the operative factor with respect to that qualification. A person whose right to vote in municipal elections depends on the payment of a tax upon property of the value of $134 may partially avail himself of the exemption, leaving a balance on which he pays taxes equal to this and retain the right to vote for members of a city council.[122]

2. Freedom of speech and assembly. A New Jersey case[123] lays down the test of unlawful assembly as being "a common intent of the persons assembled to attain a purpose, whether lawful or unlawful, by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquility and peace of the neighborhood, and have a natural tendency to inspire rational, firm, and courageous persons in the neighborhood with well-grounded fear of serious breaches of the public peace." A conviction in a lower court of violating a statute making unlawful assembly a misdemeanor was reversed, because the essential elements of unlawful assembly were not present. Another New Jersey case[124] held that a city ordinance regulating street meetings by method of police permits was valid, and that the court should not interfere by injunction with the honest exercise of discretion by the police department in granting or refusing to grant permits. A Minnesota decision, now pending before the Supreme Court of the United States, upheld a statute declaring the business of "regularly or customarily producing, publishing or circulating, having in possession, selling or giving away . . . . (b) a malicious, scandalous and defamatory newspaper . . . . " to be a nuisance which could be abated, and providing that in the abatement proceeding no jury trial could be had. The defense of publishing truth with

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party in the state, through its state executive committee, the power to 'prescribe the qualifications of its own members,' and thus to determine 'who shall be qualified to vote or otherwise participate in such political party.' In other words, the less direct, but equally effective, method of handling the matter already in use in Alabama, Florida, and other states was adopted."

[122] In re Opinion to the Governor, 142 Atl. 372 (R. I. 1928).

[123] State v. Butterworth, 142 Atl. 57 (N. J. Ct. of Errors 198).

[124] Burkitt v. Beggans, 142 Atl. 181 (N. J. Ct. of Chancery 1928).

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good motive and for justifiable ends was permitted by the statute.[125] The two most hotly controverted points in the case are those relating to freedom of speech and press, and jury trial.

3. Imprisonment for debt. Alimony decrees are not debts, according to the courts, and therefore persons guilty of disobeying them may be imprisoned.[126] The term "debts," as used in this connection, refers to express or implied contractual obligations. Punishment for refusal to obey an alimony decree is based on the violation of "society's law" or a violation of the marital relation, or the alimony is dealt with as part of the property held under coverture. It is immaterial whether the decree be for alimony by installments or in gross.[127] If alimony is dependent on voluntary contract, however, imprisonment is not permissible.[128] Inability to pay will usually be sufficient to purge of contempt.[129] Only willful disobedience of the decree is punishable.[130]

4. Protection of persons accused of crime. A modified Baumes law was held valid in Minnesota,[131] and a statute providing for a life term and ineligibility for parole for persons convicted of felony for the fourth time was sustained in California.[132] In Texas it was held that the burden is on the state to show that the accused shall not be permitted bail,[133] and in California it was held that in case of doubt, the person appearing to be insane, bail should be allowed, because the person could be detained on the ground of alleged insanity.[134] A number of cases involved the problems presented by double jeopardy, but no new principles were enunciated in them, nor were the situations presented sufficiently significant to warrant detailed attention.[135]

Some of the recent statutes enacted in the interest of reforming criminal procedure in the various states came before the courts for review, and one of the inferior courts of New York sustained a statute

[125] State ex rel. Olson v. Guilford, 219 N.W. 770 (Minn. 1928).
[126] Brown v. Brown, 4 S.W. (2) 345 (Tenn. 1928).
[127] *Ibid.*
[128] Dickey v. Dickey, 141 Atl. 387 (Md. 1928).
[129] Ex parte Frisbie, 27 Oh. App. 290, 161 N.E. 356 (1927).
[130] People v. La Mothe, 331 Ill. 351, 163 N.E. 6 (1928).
[131] State v. Zywicki, 221 N.W. 900 (Minn. 1928).
[132] Ex parte Rosencrantz, 271 Pac. 902 (Cal. 1928).
[133] Ex parte Carter, 9 S.W. (2) 1107 (Tex. Crim. App. 1928).
[134] Ex parte Westcott, 270 Pac. 247 (Cal. 1928).
[135] See, for example, Commonwealth v. Creconan, 162 N.E. 7 (Mass. 1928); State v. Williams, 6 S.W. (2) 915 (Mo. 1928); Compton v. People, 268 Pac. 577 (Col. 1928).

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of 1925 permitting accused persons to apply to the court to have an information filed against them by the district attorney, the court holding that the privilege of presentment by a grand jury could be waived.[136] A Nebraska case holds that jury trial in misdemeanor cases may be waived,[137] while the New Mexico court held that a preliminary hearing prior to formal accusation of persons accused of serious crimes covered in the constitution could be waived.[138] People v. Hickman[139] involved an important question in connection with a recent California statute permitting the plea of "not guilty by reason of insanity," which admits the commission of the offense. When joined with another plea, the latter is to be tried first, under a presumption of sanity, and then the plea of insanity is to be tried. If the accused is found sane, sentence is to be imposed. If only this plea be used, the question should go to the jury. The court upheld the statute. According to the Louisiana court, a woman is not entitled as of right to have women on a jury before which she is being tried.[140]

5. Search and seizure and self-incrimination. A Montana case affirms the doctrine that the search and seizure provision of a state constitution protects persons only against action by state officers, and decides that where the information leading to the detection of a criminal was obtained by an illegal search on the part of a federal officer it is permissible for a state official to use it as the basis for prosecution,[141] although the facts of the instant case look dangerously close to the line, because the federal and state officers collaborated almost from the very beginning of the transactions. In Oklahoma a warrant obtained on an affidavit of information and belief is insufficient,[142] while Mai v. State,[143] a Mississippi case, decides that adding the name of the county to the style of the warrant is not fatal. This latter case also holds that probable cause, when adjudicated by the

[136] People ex rel. Battista v. Christian, 224 App. Div. 243, 229 N. Y. S. 644 (1928).

[137] Miller v. State, 218 N.W. 742 (Neb. 1928).

[138] State v. Vigil, 266 Pac. 920 (N. Mex. 1928).

[139] 268 Pac. 909 (Cal. 1928).

[140] State v. Dreher, 118 So. 85, 166 La. 924 (1928), statute providing that no woman shall be drawn for jury service unless she has filed declaration of desire to be subject to such service, the declaration to be filed with a clerk of the district court.

[141] State ex rel. Kuhr v. District Court, 268 Pac. 501 (Mont. 1928).

[142] Beaster v. State, 272 Pac. 391 (Okla. Crim. App. 1928).

[143] 119 So. 177 (Miss. 1928).

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officer issuing the process, is established conclusively as between the defendant and the state, and cannot be inquired into on trial, although it may be so inquired into in a case between the accused person and the complaining party obtaining the issuance of the warrant. The Oklahoma court of criminal appeals also held, in Rhodes v. State,[144] that facts stated in positive terms cannot, on trial, be assailed on the ground that they were really based on information and belief. A warrant insufficiently described the premises to be searched in a Texas case. The wife of the owner of the premises answered, on inquiry by the officer, that she had no objection to the search being made. The court held that this did not constitute consent on the part of the absent husband, and that the defect in the warrant could not be considered waived.[145] In this case the court also held that the owner could not object to the search of an adjoining field not belonging to him. As to self-incrimination, the Kentucky case of Albritten v. Commonwealth[146] held that taking the stand voluntarily in his own behalf waives the privilege, and that the defendant is open to cross-examination on any fact connected with the charge contained in the indictment, even though it may tend to establish his guilt. In ex parte Bryant, one of the district courts of appeal in California[147] upheld a statute making abandonment of family prima facie evidence that it was willful and without lawful excuse, and a New Jersey statute[148] compelling drivers of automobiles to report to the police department any accident in which they were parties was held not to violate the protection against self-incrimination.

In Illinois the decision in Carden v. Ensminger[149] holds a court order requiring the production of all books, accounts, and records of sales of named stocks over an unlimited period of time too broad, and therefore an unreasonable search.

The writer has read numerous cases decided during the current year involving the impairment of the obligation of contracts, due process of law and equal protection of the laws, and eminent domain. No new technique seems to have been evolved in them, nor have any

[144] 267 Pac. 490 (Okla. Crim. App. 1928).
[145] Jordan v. State, 11 S.W. (2) 323 (Tex. Crim. App. 1928).
[146] 11 S.W. (2) 959 (Ky. 1928).
[147] 271 Pac. 926 (Cal. D. C. App. 1928).
[148] Rembrandt v. Cleveland, 161 N.E. 364 (Ohio 1928).
[149] 329 Ill. 612, 161 N.E. 137 (1928).

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new general attitudes or legal principles and rules been enunciated. Most of these decisions are of little significance for the student of government. Some of them are of importance to lawyers. They do not justify review, either in broad outline or in detail, in this article; and a random sampling would be of little value.

In conclusion, the writer has been impressed with the generally satisfactory manner in which the cases in state constitutional law have been decided during the period under review. "Reform" legislation met with fairly friendly treatment in several instances. Judicial explanations of decisions continue to be somewhat unsatisfactory, sometimes stating the factors which operate in the decision of the case, but sometimes failing to state all of them or even any of the important ones, and occasionally obviously misstating them. An occasional case illustrates the power of conventionally phrased rules and principles in overriding both lay and legal common sense. Inconsistency and error appear, as usual, much more often in opinions than in decisions. However, the writer is confident that any half-dozen readers of this article would have decided the great majority of the cases alluded to precisely as did the courts, and that they would perhaps have explained their decisions in a manner little, if any, more satisfactory than that in which decisions were explained by judges during the past year.

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NOTES ON MUNICIPAL AFFAIRS

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The Proposed Charter of the Federated "City of Pittsburgh." The proposed governmental unification of the Pittsburgh region, comprising the whole of Allegheny county, Pennsylvania, is from many points of view the most important project in the field of local government in recent years. The events which have transpired since the forceful extension in 1906 of the corporate limits of Pittsburgh to include the city of Allegheny have demonstrated the futility of any attempt at outright annexation in this area. For the past two decades the League of Boroughs and Townships has consistently defeated in the Pennsylvania legislature almost perennial proposals looking toward that end. The inevitability of the consolidation of the entire area for certain purposes has, at the same time, been equally apparent. In an attempt to terminate the periodic struggles between Pittsburgh and the outlying units, the League, under the able leadership of Joseph T. Miller, in 1923 instigated an investigation of the possibility of qualified consolidation—of a unification in which the existing municipalities might retain certain substantial powers of local self-government. Professor Thomas H. Reed, of the University of Michigan, whose research in the problems of metropolitan government has been very extensive, was retained by the Metropolitan Plan Commission as consultant and director of research.[1] A constitutional amendment adopted on November 6, 1928, authorized the legislature to submit to the people a charter establishing a consolidated city and county of Pittsburgh in place of the county of Allegheny, but also preserving the corporate personality and certain enumerated powers of the political divisions of the county.[2] A draft of this proposed charter was embodied in the Commission's report to the governor on March 5, 1929, and was shortly thereafter introduced in the General Assembly. The charter was passed in an amended form by the Assembly and rejected at the polls of

[1] This body—the Commission to Study Municipal Consolidation in Counties of the Second Class—was appointed by the governor of Pennsylvania under an act of June 8, 1923. *P. L.* 282, p. 688.

[2] For the text of the amendment, see *Pamphlet Laws of 1926*, No. 2, p. 34; for a brief analysis of the vote, see the writer's "City-County Consolidation in Allegheny County, Pennsylvania," in this *Review*, vol. 23, p. 122 (Feb. 1929).

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Allegheny county on June 25. The people of the county as a whole voted approximately two to one in its favor, but an unfortunate provision of the constitutional amendment, inserted by a hostile senator, required for its passage a two-thirds vote in a majority of the 122 units. It actually received such a majority in but 47.

Under the terms of the charter submitted by the Commission, the consolidated city would have exercised all of the powers possessed by the present county of Allegheny and certain others specified in the instrument.[3] All other powers were reserved to the individual cities, boroughs, and townships which make up this municipal federation. The plan of government outlined by the Commission, although many of its provisions were altered or omitted by the legislature, is of sufficient importance to political scientists as a proposal for the government of a great metropolitan region to deserve detailed description. The following chart indicates its allocation of functions between the consolidated city and the municipal divisions:

CONSOLIDATED CITY	MUNICIPAL DIVISIONS
1. *Finance*	
1. a. Power to levy taxes and impose special assessments for the purposes of the consolidated city.	1. a. All financial powers now exercised under the laws of Pennsylvania, or which may be conferred thereby, except the power now possessed by second and third class cities to assess property for taxation.
1. b. Exclusive power to assess persons and property within the consolidated city for purposes of taxation.[4]	

[3] As successor to the county of Allegheny, the consolidated city received all the property, rights, interests, claims, and causes of action now possessed by the county and the directors of the poor of the county, and all works, buildings, and property of the several cities, boroughs, and townships of the county now devoted to the care of the poor, indigent, feeble-minded, and insane. It received also such bridges and streets as might be designated by the consolidated city as through-traffic thoroughfares. It assumed the indebtedness of Allegheny county, and that of the directors of the poor of the county, as well as that of the present city of Pittsburgh incurred on account of the care of the poor, indigent, feeble-minded, and insane.

[4] Under the Commission's charter, assessors were appointed from each municipal division by a board appointed by the government and the school district thereof, in accordance with the certifications of the department of personnel of the consolidated city. The assessor of the consolidated city prescribed the

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1. c. Decision of tax appeals involving adjustments both between individual parcels of property and between municipal divisions.	
2. Health	
2. a. Power to make regulations in addition to and not in conflict with state laws.	2. a. Power to make regulations in addition to and not in conflict with state laws or regulations of the consolidated city.
2. b. Power directly to administer public health functions in municipal divisions without boards of health of competent jurisdiction, and in all cases where conditions endanger the safety of persons residing outside the division. The costs of such administration are to be charged against the municipal division.	2. b. Municipal divisions having boards of health of competent jurisdiction are authorized to administer local health functions in accordance with the above.
2. c. Power permanently to assume, with the consent of the people thereof, the administration of health functions in any division or divisions. The costs of such administration are to be charged against the municipal division.	
3. Welfare	
3. a. Administration of family welfare.	
3. b. Care of dependent children not cared for in their own families. Supervision or management of such institutions and homes as are under jurisdiction of any court sitting as a juvenile tribunal.	
3. c. Care of aged and infirm.	
3. d. Administration of the psychiatric clinic, and institutional care of the insane.	
3. e. Administration of correctional institutions, jail, and workhouse of present county, and all other correctional institutions established by law.	

standards and rules of valuation, and upon the basis of the returns of these local appraisers made the assessment.

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3. f. Conducting of quarterly welfare conferences for the improvement of welfare administration.

4. A. Planning

4. a. Full charge, control, and direction of all basic geodetic, topographic, street, and boundary line surveys throughout the consolidated city.

4. b. Formation and enforcement of a master plan for the consolidated city.[5]

4. b. Formation and enforcement of a town plan not inconsistent with the outlines of the master plan.

4. c. Power to recommend to officials of the consolidated city and of the divisions thereof specific improvements and methods of finance therefor.

4. d. Formation of regulations for the subdivision of land:
(a) General within municipal divisions having planning commissions of competent jurisdiction.
(b) Detailed as to areas not having such commissions.

4. d. In divisions having planning commissions of competent jurisdiction, the divisions are empowered to make detailed regulations for the subdivision of land, not inconsistent with the general regulations of the consolidated city.

4. e. Approval of subdivision plats, in addition to the approval of same in divisions requiring such.

4. e. Approval of subdivision plats within the territory of the municipal division.

4. f. Conducting of periodical conferences of all planning authorities within the consolidated city, and consultation with the authorities of the municipal divisions in the formation of the master plan.

[5] The charter provided that the master plan should include a major street plan, a plan for all bridges, viaducts, and overhead of underground structures, a plan for open spaces, waterways and waterfronts, and a general zoning plan, as well as a plan for the location of public property within the consolidated city.

[6] The consolidated city had also the power to regulate the erection of fences, signs, billboards, buildings, and structures within three hundred feet of any through-traffic street or county road, provided, however, that in any municipal division having an inconsistent ordinance, the ordinance of the municipal division should prevail.

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	4. B. *Zoning*
4. g. The power to create districts for the purpose of regulating the location, height, area, bulk, and use of buildings and premises in municipal divisions which shall not by 1933 have adopted a zoning ordinance.	4. g. Power to exercise zoning prerogatives enjoyed under Pennsylvania law until 1933. If by that time any municipal division has not zoned, the consolidated city shall zone same.
	5. *Safety*
5. a. Maintenance and control of a small mobile police force of the consolidated city.	5. a. Maintenance and control of local police.
5. b. Power to assist the local police of any division upon the request of same. The costs of such assistance are to be borne by the municipal division.	
5. c. Power either permanently or temporarily to assume the safety administration of any division, upon the request of same. The costs of such administration to be borne by the municipal division.	
5. d. Administration of consolidated city detective bureau. Power to assume detective functions of municipal divisions upon request of same.	5. d. Maintenance and control of local detective bureaus.
5. e. Power to make and enforce necessary regulations concerning the control of traffic on through-traffic streets.[7]	5. e. Power to regulate traffic on all except through-traffic streets within the division. Duty to assist in the enforcement of the regulations of the consolidated city concerning through-street traffic.
5. f Power to regulate by ordinance the production or emission of smoke from any source, and the future construction or rebuilding of all chimneys, stacks, etc. Inspectional powers concerning same.	5. f. Power further to regulate not inconsistently with the ordinances of the consolidated city.

[7] The consolidated city succeeded to all rights and obligations of the several municipal divisions under all franchises, consent ordinances, or other agreements with public utilities to the extent to which the same related to the portion of the facilities of any public utility company located in a through-traffic street.

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5. g. Power to make regulations with regard to prevention of fire, and to exercise the functions at present exercised by the fire marshal of Allegheny county.	5. g. Power further to regulate not inconsistently with the ordinances of the consolidated city.
5. h. Power to recommend by ordinance standards for the operation of the volunteer and paid fire departments of the municipal divisions, and to make appropriations in aid of such departments, provided said departments conform to the standards recommended.	5. h. Maintenance and control of local fire departments.
	5. i. All other safety functions permitted by the laws of Pennsylvania.
6. *Public Works*	
6. a. Power to create special utility districts within the consolidated city for the provision of utilities affecting more than one municipal division.	
6. b. Power to acquire facilities, or to contract therefor, for the supply of water to municipal divisions or private distributing companies except in municipal divisions which have not surrendered their powers in regard to water supply.	6. b. All powers relating to water supply at present exercised under the laws of Pennsylvania and not voluntarily surrendered to the consolidated city.
6. c. Power to acquire facilities, or to contract therefor, for the supply of transportation facilities within and without the consolidated city.	6. c. All powers relating to transit at present exercised under the laws of Pennsylvania.
6. d. Power to designate through-traffic streets to be henceforth maintained by the consolidated city, but not including the cleaning and lighting of the same.	6. d. Present powers and duties with regard to all other streets, and with regard to street lighting, street cleaning, sewers, garbage collection and disposal, etc.
6. e. Power to assume, with the permission of the municipal division, the ownership and management of any utility or public work of the same, the indebtedness thereof, and the responsibility for the supply of the service thereto.	
	6. f. All functions permitted under the laws of Pennsylvania with regard to the consolidated city in this charter.

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7. *Parks and Recreation*

7. a. Power to join with municipal divisions or school districts in the acquisition, improvement, maintenance, and operation of parks, playgrounds, and other recreational facilities.	7. a. Maintenance and operation of local recreational facilities.

8. *Public Art*

8. a. Power to control through a central jury all works of art to be erected in public places.	

9. *Education*

One of the unusual features of the proposed charter was the establishment of a department of research and information, with a mandatory annual minimum appropriation of twenty-five thousand dollars. The department was placed under the direction of an independent board appointed by the president of the city commission. It was empowered to investigate any and all phases of the governments of the consolidated city and the municipal divisions, and was authorized to require from them annual financial reports in a form prescribed by the department. In this manner an attempt was made to avoid the present general indefiniteness regarding fiscal affairs of some of the governmental units. It is regrettable that this very admirable feature should have been lost. The charter as originally proposed provided for a thoroughgoing personnel service for the employees of the consolidated city, which also was stricken out.

The Commission proposed that the consolidated city should be governed by a board of seven commissioners elected at large, but from districts of which each must be a resident, and a president of the board, elected at large. The president was to appoint, by and with the consent of the commission, all department heads and other officers and boards provided for in the charter. He was to be the head of the administration, and to exercise complete directory and investigative powers. Department heads were to appoint their own subordinates, and dismiss them for cause.

The reorganization of the municipal court was another of the outstanding features of the charter contained in the Commission's report. The present magistrates', aldermen's, and justices' of the peace courts were to be abolished, and replaced by a municipal bench of appointive judges. These judges, numbering one for each fifty thousand of popula-

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tion, were to be selected by the county court. Nomination was to be by petition, over the names of not less than five hundred qualified electors. The judges were required to be licensed practitioners before the highest courts of Pennsylvania and to have had experience as justices or in business. Powers regarding organization and procedure sufficiently comprehensive to permit the erection of adequate machinery for the speedy and equitable disposition of small claims litigation were delegated to the court in its collegial capacity. This feature also was rejected by the legislature.[8]

No sooner was the charter made public than the politicians of Allegheny county girded themselves to oppose it. Unable or unwilling to assume responsibility for the outright defeat of a measure which would make Pittsburgh the fourth city in the United States, and faced by the tremendous majority given in Allegheny county to the enabling amendment last November, they bent their energies to securing the excision of the principal reform features of the Commission's document. After a delay of two weeks, the political powers came to an agreement upon a measure which they were willing to support, and which was duly passed by the legislature at this session. They struck out of the charter all reference to the departments of welfare, safety, planning, parks and recreation, public art, personnel, and research and information, and the proposed municipal court. They provided for the continuance of the present county board of commissioners as the governing body of the consolidated city for its first two years, and did away with the provision for a director of finance. As it came out of the senate committee, the bill still provided for the consolidated city and county of Pittsburgh, with powers somewhat expanded over those of the present county of Allegheny. It was still possible for the consolidated city to have a police force and a health department, to create public utilities districts, to have a metropolitan water system, to employ the district system of special assessment, to designate through-traffic thereon. The administrative organization which the original draft of the charter created to care for the exercise of these powers was largely cut away, and that matter was left to the discretion of the board of commissioners.

The charter, as finally amended by the legislature, was good enough really to accomplish a substantial consolidation on the federated

[8] For a striking commentary upon the reprehensible operation of the present system of small claims courts in Allegheny county, see G. Schramm, *Piedpoudre Courts*, (Pittsburgh, 1928).

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plan, and at the same time sufficiently denuded of reform features to placate the politicians of Allegheny county. Fortunately, moreover, it was agreed to continue the Metropolitan Plan Commission for another biennium, with authority to make further recommendations.

As passed by the legislature, the charter went to the Allegheny county electorate on June 25. The Metropolitan Plan Commission supported it, taking the attitude that the acceptance of this entering wedge, in view of the continuation of the Commission and the possibility of future alteration of the charter, was more politic than insistence upon the letter of its recommendation. The charter was supported by the Republican, Democratic, and Independent organizations, by the League of Women Voters, the Chamber of Commerce, the Allied Boards of Trade, and the Building and Loan Associations. It was opposed in the McKeesport section, by the volunteer firemen, by many justices of the peace and aldermen, and by some other minor politicians. Even with the assistance of the Republican organization, the handicap of the requirement of a two-thirds vote in a majority of the units was fatal to the instrument.

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A "P.R."—City Manager Charter for Philadelphia? A few minutes before one o'clock on the morning of March 26 a bill to make the city manager plan, with proportional representation, available for Philadelphia—a measure which for a time seemed to have a good chance of passing—was done to death in characteristic machine fashion behind closed doors in the Pennsylvania senate committee on municipal affairs. So ended the first dramatic chapter of a story of municipal revolt which may perhaps rival that of Cincinnati before it is finished. The backgrounds of the two stories are, in fact, very similar. The Cox-Hynicka machine of Cincinnati was one of the few political organizations which in strength and notoriety vied with the Vare machine and its Philadelphia predecessors. It is chiefly the success of Cincinnati in ridding itself of the domination of its machine with the aid of its P. R.-city manager charter and its transforming what was perhaps the worst-governed to what is probably the best-governed large city in the country that has inspired the new charter movement in Philadelphia.

Last fall, following an outbreak of underworld warfare, a searching grand jury investigation of Philadelphia underworld conditions was

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started at the recommendation of Judge Edwin O. Lewis and pushed energetically by the district attorney, former Judge John Monaghan. Gang murders were quickly traced to rivalries in the bootleg business, the enormous profits of which were revealed by bank deposits running into the millions. Next, the flourishing condition of the liquor business was linked with the city police force, members of which were shown to be in possession of unexplained wealth, while others were definitely identified as the receivers of protection money by carefully kept accounts in the offices of bootleggers who evidently regarded themselves as secure for all time. Several high police officials were convicted and removed from office. Meanwhile the investigation began to reach out into the political circles which controlled the police. One member of the state legislature was sent to the penitentiary.

Such conditions had long been suspected, but so long as the Vare organization held together and controlled all the elective and appointive offices, no proof was forthcoming. Undoubtedly the illness of Mr. Vare and the lack of a single recognized leader to take his place had something to do with Mr. Monaghan's unprecedented success in following the trail of graft and crime. Mr. Monaghan's opponents in the Vare machine, of which he had formerly been a part, openly charged that he was using his cleanup as a means of building a new machine in alliance with the real estate magnate, Albert M. Greenfield, and perhaps also Thomas E. Mitten, head of the Philadelphia Rapid Transit Company, and hinted that the exposures did not extend further into political circles because those politicians against whom evidence was found had been forced to sign up under the "new power" instead. Be that as it may, public resentment over the conditions that were exposed by Mr. Monaghan became so powerful that Mayor Mackey was finally forced to replace his director of public safety by Major Lemuel B. Schofield, who was Mr. Monaghan's law partner and first assistant in the probe.

At this juncture the popular demand for a change was turned into more fundamental channels by a suggestion from Thomas R. White as chairman of the Philadelphia Committee of Seventy, an organization devoted to honesty in elections and efficiency in city government, and the initiator of the change to the present Philadelphia charter with its single-chamber council in 1919. Mr. White pointed out that the condition in the bureau of police was only one of many points at which the city government was falling short, and that Cincinnati and other cities had been obtaining relief through the city manager plan with

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proportional representation. He promised that if popular response to his suggestion proved sufficient the Committee of Seventy would initiate a movement for a new charter for Philadelphia along the same lines.

The response was immediate. Letters of encouragement poured in from representative citizens, and most of the newspapers said editorially that the possibilities of the idea should at least be explored. Accordingly, Mr. White called together a drafting committee of some twenty-five leading citizens, who, after an evening of discussion with Professor A. R. Hatton, voted unanimously to authorize the preparation of a city manager charter with a council elected at large by proportional representation, to go into effect, if approved by the voters of the city with the permission of the legislature, at the next regular election of the council in 1931. The charter was prepared by the staff members of the Bureau of Municipal Research and the Proportional Representation League, and, with a few minor changes, was approved by a second meeting of the full committee and given to the public. It was not a complete revision of the present charter, but made only such changes as seemed necessary to allow the manager plan with proportional representation to work to good advantage.

The principal changes proposed were as follows: 1. The elective mayoralty was abolished and the administrative duties of the mayor were vested in a city manager, to be chosen by the council from any part of the country "solely on the basis of his executive and administrative qualifications" and retained for an indefinite term, subject to dismissal at any time after due public hearing. 2. The title and ceremonial duties of the mayor, but not the power of veto, were vested in the president of the council, chosen by the council as at present. The new mayor was also to retain powers of appointment and ex-officio offices of a non-administrative nature. 3. The receiver of taxes was taken off the ballot and put under the manager, leaving the councilmen as the only purely city officials to be elected. The city controller and city treasurer, being county officers also, remained elective because of requirements of the state constitution. 4. The councilmanic districts were abolished and the councilmen were to be elected by proportional representation at large on a non-partisan rotating ballot, without primaries. Candidates might be nominated either by petition of 5,000 registered voters who had signed no other petition, or by ten such voters, with a deposit made of $250, to be returned if the candidate polled as many as 5,000 votes. This would probably have been the

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first American use of the deposit method of nomination used so extensively in Great Britain and elsewhere. The usual Hare system election rules were considerably simplified by the use of a fixed quota instead of a fixed number of members. Any candidate who received 25,000 votes (each voter having one effective vote) was to be declared elected, and the council was to consist of as many persons as polled this quota—probably between fifteen and twenty, on the basis of recent elections. The present councilmen number twenty-two. 5. The administration of the civil service was taken from the civil service commission, now appointed by the council, and put under a director of civil service appointed, like other directors, by the manager; but the rule-making and judicial functions of the commission were vested in a commission composed of the director, as chairman, and two associate commissioners, one elected by the council and the other by the employees in the classified service. This arrangement was suggested by the model city charter of the National Municipal League, on which much of the proposed charter is based.

While the charter was being prepared the newspapers conducted an exceptionally fine unsolicited campaign of education. Beginning early in January, immediately after the Committee of Seventy had devoted its annual dinner to a consideration of the manager plan and P. R., the *Inquirer*, the *Public Ledger*, and the *Evening Bulletin* carried front-page reports of the success of the plan in Cincinnati and other cities, while the *Record*, Philadelphia's one Democratic paper, gave strong editorial support, emphasizing the importance of proportional representation. At the same time, important organizations throughout the city started holding meetings for consideration of the plan.

As soon as the drafting committee finished its work a City Charter Committee was organized to marshall public support. Mr. White was made chairman and Roland S. Morris, ambassador to Japan under President Wilson, vice-chairman. Walter J. Millard, field secretary of the P. R. League and the National Municipal League, was brought from Cincinnati to act as field secretary and fill most of the important speaking engagements. The executive committee and council included Judges E. O. Lewis and Lewis H. Van Dusen, former mayor W. Freeland Kendrick, Congressman George S. Graham, former district attorney Charles Edwin Fox, four college presidents, the presidents of most of the important women's organizations, labor leaders, ministers, business men, manufacturers—all together, over one hundred of the city's foremost citizens. A legislative cam-

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paign fund of ten thousand dollars was underwritten by Cyrus H. K. Curtis, Edward W. Bok, Samuel S. Fels, Charles J. Rhoads (recently appointed head of the Indian bureau), and seven other persons nearly as well known in Philadelphia. More than half of this amount was subsequently made up by popular subscription.

When it came to getting the bill introduced in the legislature there was more difficulty. The hostility of the Vare organization was to be expected, and at first no one of the Philadelphia delegation was willing to risk his political fortunes as its sponsor. To have the bill introduced by an upstate member was to court almost certain defeat, for the state leaders had announced their adherence to the principle of "home rule"—meaning that in local matters the local members could have what they wanted, even if what they wanted was a denial of home rule to the voters.

On February 4, to the astonishment of nearly everyone, the bill was introduced by Senator Samuel W. Salus, former president pro tempore of the senate and stalwart member of the Vare machine. In a moment, what had seemed for this session a mere educational gesture became a serious political possibility. Senator Salus made no pretense of espousing the bill on principle, beyond saying that he considered it a meritorious measure. He made it the occasion for a vigorous denunciation of Mr. Mitten, Mr. Monaghan, Mr. Greenfield, and Mayor Mackey, and a means of preventing his political opponents from monopolizing the credit for reform measures, but he nevertheless made it clear that he intended to support the bill to the limit. It looked for a time as if the Vare organization, which had just lost control of the Municipal Court, was being pushed hard enough so that it might follow his lead, and that consequently (since Mr. Greenfield also gave indications that he would not resist) the measure might become law with little opposition. Presently, however, Chairman Hazlett of the Republican city committee announced that harmony had been restored within the organization. Just what this meant was not at first apparent; but it gradually became clear that for some reason the Vare forces no longer considered Mr. Greenfield a serious menace. The stock of the manager bill went down.

A hearing, attended by over a hundred Philadelphians, was held at Harrisburg, and the bill was explained by Mr. White and Mr. Millard and defended by prominent business men and representatives of the Central Labor Union, the League of Women Voters, the two organizations of Republican Women, the Democratic Women's

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Committee, the W. C. T. U., and several other organizations, and no one appeared in opposition. The *Public Ledger*, the *Evening Bulletin*, the *Record*, and the *Inquirer* carried strong editorials urging the legislature to pass the bill, since it was merely permissive, so as to give the voters a chance to decide the question for themselves. But when the Senate committee on municipal affairs, which includes all eight of the Philadelphia senators, met to consider the bill at the close of the evening session of March 25, it took them just about five minutes to decide that it should not be reported out for a vote.

The division on the bill among the Philadelphia senators was fairly close. Only four of the seven who were present opposed it. Senator Salus and Senator Woodward, the one independent Republican, who had declined to sponsor it because of opposition to the manager plan, supported it on the principle of home rule, and Senator McCrossin, the Democrat who defeated Mrs. Flora Vare for reëlection in the Smith wave last fall, took no part in the discussion but was prepared to vote for the bill on the same principle. The upstate senators, however, joined Chairman Aron and the Vare organization majority against the bill, and with enthusiasm. There seemed to be a fear that it might be their turn next (bills to make the city manager plan with P. R. optional for other cities and boroughs were at the moment reposing in the House committee on municipal corporations). And the news of the indictment of three councilmen in Cleveland, even though all three were holdovers from the ward plan, was eagerly seized upon as justification for the action taken.

It is clear that the feature of the bill which caused its defeat was not the manager plan but proportional representation. The manager plan without P. R. would probably have suited the Vare organization very well, for every member of the present council was elected with its endorsement, and the appointment of a manager by such a council would have served to strengthen the organization's control. The effect of P. R. can readily be seen when it is remembered that J. Hampton Moore, independent candidate for mayor, polled about 160,000 votes in the last Republican municipal primary. Those votes, under the proposed new charter, would have elected six independent councilmen out of a total of perhaps seventeen. Add the votes of the Democrats and unattached independents and those of the voters who do not think it worth while to vote under present circumstances, and the possibility of even an anti-organization majority becomes apparent. The present members of the council sit high in

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the councils of the party. They were taking no chances on a popular endorsement of proportional representation. All this the leaders of the City Charter Committee understood. A hint from them would doubtless have meant the elimination of P. R., and possibly the passage of the bill. But they were practically unanimous in preferring temporary defeat to such an emasculation of their measure.

There is still a chance that the new charter will be in effect at the next election of the Philadelphia council, and the Charter Committee is laying definite plans to make the most of that chance. There will be another session of the legislature in 1931, and the council election does not occur until the fall of that year. Meanwhile, educational work is going forward steadily and the necessary organization is being built up by neighborhood meetings in various parts of the city. When the next legislators come up for election, the manager-P. R. charter will be an issue they will have to meet before the public. And even before that time the Vare organization, already threatened by dissension from within, will be met at each election by a newly formed independent Republican League, with Thomas R. White as chairman—an organization in which many of the City Charter Committee leaders are taking an active part. Though this group has no formal connection with the Charter Committee, it also is making an issue of the manager bill by urging that an organization which would deny the people a vote on it in the face of so real a demand has forfeited all claim to the people's support. Philadelphia will bear watching.

GEORGE H. HALLETT, JR.

Philadelphia, Pa.

The Cleveland Charter Threatened Again. For the fourth time in about as many years, the city of Cleveland will vote, probably August 20, on proposed amendments to its charter. This will be the third successive attempt to eliminate the manager plan and proportional representation. The first unsuccessful effort, in August, 1925, was directed against proportional representation alone. The present campaign for a return to the discarded system of an elected mayor and a council of thirty-three members chosen from as many wards is the aftermath of a series of revelations and scandals in Cleveland's political life. Wearied by recurrent evidences of malpractice in the tabulation of election returns, and disgusted by the bravado with which the officials charged with the administration of elections flaunted their

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authority, the city last fall experienced a revival of civic conscience.

Cleveland is normally a Republican city, and unless extraordinarily aroused is almost certain to return a majority for a Republican candidate. In truth, that fact had been so generally recognized that it had developed a chronic lethargy in Democratic ranks. What has been known as the "sixty-forty break," whereby the Republicans took about sixty per cent of the jobs and let the Democrats content themselves with the smaller portion of the spoils, has prevailed in the local political situation for several years past. Because of the Ohio law, which makes it necessary to prove almost beyond a doubt that the results of an election will be materially altered before a recount of a vote can be had, it was practically impossible to obtain any satisfaction in court. But the presidential election of last year reawakened party responsibility and aroused to practical political activity and coöperative effort the heirs to the democratic doctrines and civic ideals of Tom L. Johnson. Spurred by the opportunity of capturing what is probably the most important local office, that of county prosecutor, through the retirement of the Republican incumbent for eight years and an apparent breach in the Republican ranks over the choice of his successor, the Democrats, working through the Cleveland Bar Association, whose president is one of the Democratic leaders, sought an inquiry into the election machinery of Cuyahoga county.

Former governor Donahey and the attorney-general of Ohio were scheduled for retirement at the end of 1928. What better display could they make of public interest and civic enterprise than to investigate the most powerful stronghold of the most powerful division of the state? The chief clerk of the Cuyahoga county board of elections was likewise the chairman of the executive committee of the county Republican organization. Hence the attorney-general went to Cleveland last September to inquire into suspected irregularities in election administration. He became convinced of their existence and convened a special grand jury which demanded immediate ousting of the entire Cuyahoga county board of elections (with one exception), their chief clerk and deputy clerk, Republicans and Democrats alike. Within a week before the presidential election, with its anticipated heavy balloting, an entirely new board, all outstanding citizens, and temporary clerks were installed. Two of the newly appointed members have already resigned and have been replaced by women leaders of the Democratic and Republican parties respectively.

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Attorney-general Turner then began the prosecution of poll workers, and his successor is continuing it with the aid of local special counsel. After a third trial before a non-local judge, two juries having failed to agree in the case, two precinct officials in the August primary were finally convicted of fraudulently entering names on the poll books, falsifying signatures, marking ballots of absent voters, and other misdeeds. These are the only convictions after seven trials of election workers, the rest of which have resulted in acquittals or jury disagreements. Prospects of success for the attorney-general's office are not encouraging in the remaining two dozen or more indictments.

Meanwhile Ray Miller, three times Democratic candidate for prosecutor, carried Cuyahoga county. The earlier loss of the sheriff's office had broken the Republicans' virtual monopoly, and this defeat threatened the very seat of their power. The city council offered an excellent battlefield for the warrior-prosecutor, eager to test his new implements. Despite the pleas of civic organizations and newspapers, and even under proportional representation, the strong Republican organization had been able to elect, and repeatedly reelect, to the council persons the nature of whose political activities may be inferred from the following quotations from bulletins of the Cleveland Citizens' League relating to civil service: (1) "Patrolman P. dismissed by director on May 2, 1924, for intoxication while on duty and willful disobedience to orders of a superior officer. Previous record was unusually bad; had been up on charges eleven times in five years; had frequent reprimands and fines for disobedience and neglect of duty; dismissed once before in 1920, but was afterwards reinstated; appealed to the commission through Councilman Thomas W. Fleming, attorney, and on May 26, 1924, the commission sustained the director. But in January, 1925, on request of Mr. Fleming, the case was reopened and the commission reinstated P. as patrolman." (2) "In an examination for stationary engineers in January, 1925, a temporary employee in the service stood seventy-fourth on the list and failed to pass. On the demand of Councilman Liston G. Schooley, chairman of the council finance committee, who threatened to hold up the commission's pay roll, the papers of this temporary employee were regraded, more than six months after the thirty-day period, and he was placed seventh on the list and was duly appointed."

The first of the above references is to the Republican chieftain of the negro voters, chairman of the council committee on fire and police. He has recently been convicted and sentenced for accepting a

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bribe to secure disability payments for a policeman injured in line of duty, but the case is being appealed. The second quotation refers to the chairman of the important finance committee, who is now serving a five-year sentence in the Ohio penitentiary for pocketing some $33,000 out of about $83,000 involved in a city real estate transaction. Trial of a third councilman resulted in acquittal, and a fourth case has been dismissed by the judge, though the prosecutor threatens to reopen it.

The persons involved in these charges were members of the city council before the advent of the city manager plan, but the incidents have occurred during a manager's administration. That makes excellent campaign material. The general impression that there is something scandalous about the administration of Manager Hopkins is giving unusual vigor to the attack upon the charter, which otherwise might be regarded as a mere chronic recurrence.

Two counter-moves are being attempted: petitions are being circulated by one group for a charter providing for a mayor and council of nine members elected at large by proportional representation, and another faction seeks the election of a charter commission to study the document now in use with a view to its revision. Neither of these propositions is likely to mature in time for presentation simultaneously with the so-called Davis-Downer-Danaceau charter in August.

The political alignment is practically the same as in the previous charter struggles. The Democratic organization will probably oppose the proposed charter. Its women's division has already declared against it. The Citizens' League, the League of Women Voters, the Woman's City Club, and many other civic organizations will also be opposed. Much will depend on the degree of support which the regular Republican organization lends to ex-Mayor and ex-Governor Harry L. Davis, who has not in recent years enjoyed the whole-hearted favor of the Republican leader, Maurice Maschke. In fact, it was the opposition of the regular organization that defeated the Davis proposal in the fall of 1927.

DORIS DARMSTADTER.

Pittsburgh, Pa.

The City Manager Campaign in Toledo. Toledo was faced last fall with a long ballot indeed. The ballyhoo of the national and state compaign, the ease of voting party tickets, the good work done

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by some of the organizations interested in the bond issues, and the degree of satisfaction existing with regard to Mayor Jackson's administration of city affairs militated against the success of the manager plan. The complicated nature of the electoral job in Toledo last November 6 is indicated by mere mention of the fact that there were ten ballots containing the names of 230 persons running for fifty-five offices, and, in addition, nine referenda were to be voted upon. In such a maze, the wonder is that Toledo voters were not more confused than was actually the case.

The charter commission elected in the fall of 1927 completed its work on July 30 and voted ten to four in favor of submitting the charter which it had made. The charter provided, among other things, for a city manager and a council elected by the fixed quota modification of P. R. Under this plan, as provided by the charter, 7,000 voters would elect a councilman, with the proviso that at least seven must be elected, and also that when the number exceeded nine the quota, 7,000, must be increased at the subsequent election by 1,000 votes, and so on, always keeping the number between seven and nine.

Early in August a second proposal was brought into the council and approved by it for submission as an alternative. This amendment, some thought, was intended as a red herring, designed only to add confusion to a situation already somewhat confounded. The proposed amendment was the same as the charter commission's P. R. charter except for some minor changes in the sections dealing with special assessments and the civil service provisions, and with the important difference that P. R. with the fixed quota was eliminated. For the electoral provisions of the proposed charter were substituted the ward method of election, one councilman being chosen from each of ten wards, and one to be elected at large. The powers of the manager were somewhat weakened, the budget provisions were not as good, and the powers of investigation of the commission of publicity and efficiency were somewhat abbreviated. Although Mayor Jackson vetoed the ordinance submitting the proposed amendment to the people, his action was voided by the courts. It was charged by the proponents of the P. R. charter that the amendment was submitted at the behest of Walter F. Brown; and members of the council, which is predominantly "organization," deeply resented the mayor's stinging veto message and his rebuke to the council for allowing the submission of the amendment to the charter, which was immediately

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dubbed by the Toledo *News Bee* the "Brown-Guitteau" charter.

The P. R. charter fight was made by the organization formed for that purpose, the People's Charter Campaign Committee. A. R. Kuhlman, president of the Chamber of Commerce in 1926, when the fight for better government and the city manager took a new lease on life with the aid of that group, was elected chairman of this new body. George D. Welles, a distinguished attorney, Wendell Johnson, director of the Social Service Federation, and William P. Clarke, labor leader, along with Walter F. Millard, of the Proportional Representation League, were the outstanding champions of the P. R. charter during the campaign. The opposition forces were led by Judge John M. Killits, ably aided and abetted by the Toledo *Blade* and the Toledo *Times*.

The Central Labor Union came out against P. R., and the Polish vote, controlling two out of twenty wards, was almost solidly against the P. R. charter. There were too many things before the people. The fact that a choice had to be made between the proposed charter and the charter amendment (aside from all other issues), the influence and prestige of Judge Killits, and the prevalent satisfaction with the prevailing administration—all doomed the fight to failure. In addition, the fixed quota with a variable council was a vulnerable point and difficult to meet in an entirely satisfactory way in debate. The official count revealed the vote as having been 36,445 for the charter and 52,604 against. The vote on the amendment was even more adverse, 59,232 voting against it, and only 27,634 voting in favor of it.

It may be safely assumed that the fight is not yet over. On November 19 the council was asked to authorize a special election on a new proposal for the city manager and proportional representation. The request was rejected and the movement has apparently died down, although it is rumored that an attempt will be made by the friends of the city manager and proportional representation to have another vote on their plan this fall. It is felt, and with a large degree of justification, that the last election was not a fair test, because the issue was confused. In such a situation the voice of the people is a stammering, incoherent mumbling, and the friends of the city manager with P. R. desire a clearer expression of the people's will.

H. T. Shenefield.

Toledo, Ohio.

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NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

As announced in the May issue of the *Review*, the twenty-fifth annual meeting of the American Political Science Association will be held at New Orleans on December 27–30. Other organizations meeting at the same time and place include the Association of American Law Schools and the American Association for Labor Legislation. Headquarters of the Political Science Association will be at the Jung Hotel. The committee on program consists of Professors Clyde L. King (chairman), S. Gale Lowrie, R. M. Story, Quincy Wright, and Walter F. Dodd, and Colonel A. T. Prescott. A committee to nominate officers for 1930 has been appointed, as follows: Walter J. Shepard (chairman), H. W. Dodds, Isidor Loeb, J. M. Callahan, and Miss Edith Bramhall. When the present issue of the *Review* went to press, the committee on program had made arrangements (subject to later changes, to be announced in the November issue) for (1) general sessions on (a) impeachments and (b) foreign governments; (2) a joint session with the Association of American Law Schools on judicial reorganization; (3) a joint session with the Association for Labor Legislation for the delivery of presidential addresses, and another on administration of labor legislation; and (4) a lengthy list and rich variety of round tables. The following round tables were planned to meet on all three days (the director being indicated in each case): 1. Local Government, C. M. Kneir; 2. Training for Citizenship, Charles E. Merriam; 3. Psychology of Political Types, H. D. Lasswell; 4. Public Personnel Policies, W. E. Mosher; 5. Recent Contributions to Political Theory, Walter J. Shepard; 6. Quantitative Methods in Politics, Stuart A. Rice; and 7. Legislatures and Legislation, A. R. Hatton. A round table on Pressure Groups will deal, on successive days, with legislation, primaries and elections, and the executive, under the direction of P. H. Odegard, J. H. Logan, and E. P. Herring, respectively. Still other round tables, each meeting once or twice, include: 1. Methods of Measuring Municipal Activities, directed by H. W. Dodds; 2. National Administration, by W. F. Willoughby; State Administration, by M. B. Lambie; 4. Fiscal

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Problems in State Government, by J. M. Mathews; 5. The Far East, by H. S. Quigley; 6. Russia—Foreign Administration, by S. G. Lowrie; 7. Public Opinion in Government, by W. B. Graves; and 8. Police Administration, by August Vollmer.

Dr. Frank J. Goodnow retired in June from the presidency of the Johns Hopkins University, but will continue to lecture on municipal law.

Professor Francis W. Coker, of Ohio State University, has been appointed Cowles professor of political science in the graduate school of Yale University and will assume his new position this autumn.

Professor Charles E. Martin, of the University of Washington, has been accredited to the universities of the Orient and the Pacific area as Carnegie Endowment professor of international relations. He will arrive in Japan in September and expects to lecture at universities and before various learned societies in that country and China, and perhaps also in the Philippines, Australia, and New Zealand.

Professor Chester Lloyd Jones, of the political science and economics departments at the University of Wisconsin, has been made director of the University's school of commerce. He visited Mexico and other Latin American countries during the summer.

Professor Charles E. Merriam was on leave from the University of Chicago during the spring quarter and was engaged in work for the Rockefeller Foundation in Paris.

On the basis of the new Cowles foundation, Dr. Harold J. Laski, of the London School of Economics and Political Science, will serve during the second half of the coming year as visiting professor of political science at Yale University.

Professor Thomas H. Reed, of the University of Michigan, will be on leave of absence during 1929–30. During the first semester he will act as consultant to the City and County Metropolitan Development Committee of St. Louis, and during the second he will be visiting professor at Harvard University. His work at Michigan will be taken over by Dr. Arthur W. Bromage, formerly instructor at Michigan and Harvard.

Dr. James K. Pollock, Jr., while in England as a fellow of the Social Science Research Council observing the parliamentary election, spoke

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before the Royal Institute of International Affairs on "A Comparison Between the English and American Party Systems." Professor Pollock has recently been promoted to the rank of associate professor at the University of Michigan.

Dr. Irwin Stewart, of the University of Texas, has accepted a professorship of political science in the American University, Washington, D. C.

Dr. Herbert W. Briggs, recently acting professor of political science at Oberlin College, has received an appointment at Cornell University.

Professor J. P. Senning has succeeded Dean H. G. James as chairman of the department of political science at the University of Nebraska.

Dr. Joseph S. Roucek, of New York University, has been appointed professor of social sciences in Centenary Collegiate Institute, Hackettstown, N. J.

After fifteen months at the University of Hawaii as acting head of the department of history and politics, Professor William H. George has returned to his regular post as professor of political philosophy at the University of Washington.

Professor Kenneth Cole has returned to the University of Washington after a period on leave at Harvard University. Mr. Granville Hulse, instructor in municipal government at Washington, will return to Harvard to continue his graduate studies.

Professor Harold M. Vinacke has been granted leave of absence from the University of Cincinnati for 1929–30. He expects to spend the year in making a study of political conditions in Austria, Hungary, Czechoslovakia, and Jugoslavia. Mr. J. A. Holliday will give his courses at the University of Cincinnati during the year.

Professor Graham H. Stuart, of Stanford University, gave courses at the University of Southern California in the summer session, and Professor Roy Malcom, of the latter institution, served similarly at the University of Washington.

Dr. John J. George has resigned his professorship of history and political science at Converse College to accept an assistant professorship of political science at Rutgers University.

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Dr. George B. Galloway, formerly of the professional staff of the Philadelphia Bureau of Municipal Research, has joined the staff of Editorial Research Reports in Washington, D. C.

Professor B. A. Arneson, of Ohio Wesleyan University, gave courses in the summer session of Miami University, and Professor J. F. Shreiner, of Miami, taught in the summer session at Oberlin.

Professor Kenneth Colegrove, of Northwestern University, will be on leave during the coming year and his courses will be given by Dr. L. E. Egbert, formerly of the University of Illinois.

Professor Walter R. Sharp has secured leave of absence from the University of Wisconsin in order to serve during the coming year as secretary to the Social Science Research Council's committees on fellowships and grants-in-aid. He succeeds Dr. John V. Van Sickle in this position.

Professor Harold S. Quigley, of the University of Minnesota, has been granted a Guggenheim fellowship. He will visit Japan during the coming winter, with a view to completing some parts of his forthcoming book on the government of Japan.

Professor Harwood L. Childs, of Bucknell University, is in charge of an experimental extension course on Pennsylvania state government to be given in the state capitol at Harrisburg during the coming year. The lectures will be given by various state officials.

Dr. Karl C. Leebrick, professor of political science and history at the University of Hawaii, has become dean of the college of liberal arts at Syracuse University.

Dr. Herman H. Trachsel, associate in the department of political science at the State University of Iowa, has been appointed associate professor at the University of South Dakota.

Dr. W. Leon Godshall has been promoted to a full professorship of political science at Union College, and Mr. Harold R. Enslow, of the University of Pennsylvania, has been appointed assistant professor in the same institution in succession to Mr. Albert H. Hall, who has resigned his instructorship.

Dr. James Hart has been promoted to an associate professorship at Johns Hopkins University. During the summer he gave two

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courses in political science at the University of California at Los Angeles.

Mr. Paul K. Walp received the doctorate at Johns Hopkins in June and has become an instructor in political science at the University of Kentucky.

Professor C. Walter Young, of George Washington University, will continue his research on the Manchurian question at Johns Hopkins University, where he has been awarded a Johnston fellowship for 1929–30.

Mr. Howard A. Calkins, graduate student at the University of Wisconsin, has been appointed instructor in political science at the University of Texas.

Professor Frank W. Prescott, of the University of Chattanooga, gave instruction during the summer session at North Carolina College for Women.

Mr. Robert Phillips, who received the doctor's degree at the University of Michigan in June, has returned to Purdue University, where he becomes professor of government.

Mr. Rowland Egger, of the University of Michigan, has been appointed instructor in municipal government at Princeton University, and Mr. Harold Dorr has been appointed instructor in political science at Michigan.

Mr. David Hunter Miller, of New York City, has been appointed to the new post of editor of treaties in the State Department at Washington. It is planned to publish authentic texts of all treaties to which the United States has ever been a party, regardless of whether they have subsequently ceased to be in force.

Mr. David Lawrence, editor of the *United States Daily*, announces that, starting in September, that paper will broaden its scope to include the publication of information concerning the work of the governments of the various states. The new material will be presented, not state by state, but topically, under such headings as taxation, public health, education, agriculture, insurance, banking, etc.

Professor Bruce Williams, who, after a year spent as professor of political science at Cornell University, was to have returned to the

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University of Virginia this fall, died in Baltimore on July 14, at the age of thirty-seven. He had served the American Political Science Association as a member of its executive council, and also as a member of the board of editors of the *Review*, and he had published, among other things, a noteworthy volume entitled *State Security and the League of Nations*, consisting of lectures delivered at the Johns Hopkins University, on the Albert Shaw foundation, in 1927. Professor Williams had been in failing health for upwards of a year.

Drs. John G. Hervey and Edward B. Logan have been promoted to assistant professorships in political science at the University of Pennsylvania. Associate Professor Austin F. Macdonald has received an appointment as Simon Patton research fellow of the American Academy of Political and Social Science for the year 1929–30 and will make an investigation of municipal airports. Dr. Leland J. Gordon, instructor, has been awarded a Penfield traveling scholarship in international law and relations and will study recent Turko-American trade and political relations. He will spend a year in Geneva, Constantinople, and Angora.

The University of Chicago announces the appointment of Mr. August Vollmer, of the Berkeley police department, as professor of police administration, in the political science department. Mr. Vollmer will direct the research program of the University of Chicago in police administration, will be prepared to serve as consultant on police matters upon request, and will give graduate courses in police work. It is expected to correlate the research work of Mr. Vollmer with that of the Bureau of Public Personnel Administration, the International City Managers' Association, and the political science department in a comprehensive program.

During the recent summer session the University of Minnesota conducted a conference lasting one week on the problems of the small town. Several members of the political science department participated, and a small selected group of economists and sociologists met for a more intensive study of some of the social and economic problems of villages and small cities.

A conference of the League for Industrial Democracy, held at Camp Tamiment, hear Stroudsburg, Pennsylvania, in June, was devoted to "a program for municipal government." The program dealt with municipal graft, crime and the city government, municipal

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control of public utilities, housing, labor protection, and non-partisan versus partisan elections.

The sixth annual institute at the University of Chicago on the basis of the Norman Wait Harris Memorial Foundation was held June 17–28 and was devoted to problems of population and migration.

The Social Science Research Council's committee on grants-in-aid calls attention to the fact that the closing date for receiving applications for consideration at the November meeting is October 1. Any mature American (including Canadian) scholar of proved research ability in fields falling within the Council's range of interest is eligible to apply. The committee expects that the applicant's project will be well under way, that he can forecast the time and money required to complete it, that the grant is not to be used in fulfillment of requirements for any higher academic degree, and that the applicant has already canvassed the possibility of aid from his own institution. Applications should be addressed to Walter R. Sharp, secretary of the committee, Social Science Research Council, 230 Park Avenue, New York City.

The first American meeting of the Institute of International Law will be held at Briarcliff Lodge, New York, in October. The organization's membership, restricted to sixty active and sixty associate members, is principally European; nevertheless the coming meeting is expected to be largely attended. Dr. James Brown Scott is president. The Fourth Conference of Teachers of International Law will be held in conjunction with the session of the Institute, and the members have been invited to participate in the Institute's proceedings.

At the third annual session of the Institute of Public Affairs held at the University of Virginia in early August, a round table on democracy as operative in America was conducted by Professor Thomas H. Reed, of the University of Michigan; another, on law enforcement, by Professor Raymond Moley, of Columbia University; a third, on problems in contemporary politics, by Professor Walter Starr Myers, of Princeton University; and a fourth, on our Latin American relations, by Professor Clarence H. Haring, of Harvard University.

At the Institute of Politics, now in session at Williamstown, Mass., the foreign lecturers and round table leaders are Professors André Siegfried of Paris, William E. Rappard of Geneva, T. E. Gregory

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and J. W. Headlam-Morley of London, Mr. George Young, also of London, Count Giovanni Elia of Rome, and Dean P. E. Corbett, of McGill University. Round table conferences deal with Canadian-American relations, limitation of armaments, post-war constitutional changes in Europe, the interests of United States citizens in Latin America, the effect of public fiscal policies on trade and employment, banking and currency, inter-ally debts and reparations, and trade relations as affected by politics, science, and finance.

The first session of the Institute of Statesmanship was held under the auspices of Rollins College at Winter Park, Florida, during the week of March 25. The program was devoted to a consideration of various aspects of the future of party government in the United States. There were round tables, open conferences, and lectures on party development and methods, political trends in the South, the possibilities of party realignment, and party responsibility. Among those who took part were President H. W. Chase, of the University of North Carolina, Dean Walter J. Shepard, of Ohio State University, Professor Lindsay Rogers, of Columbia University, Professor John Dickinson, of Princeton University, Professor Harold R. Bruce, of Dartmouth College, Professor James K. Pollock, of the University of Michigan, and Messrs. Norman Thomas, Albert Shaw, and Oswald Garrison Villard of New York.

At a joint meeting of five committeees appointed by a similar number of organizations to promote the expansion of the publications of the Department of State of the United States, held in Washington on April 26, provision was made for a sub-committee to study the question of a comprehensive publication program, such study to include an examination of the practice of various foreign offices abroad. The committee as appointed consists of Professor Manley O. Hudson, of Harvard University (chairman), Dr. Raymond L. Buell, of the Foreign Policy Association, and Dr. H. Barrett Learned, of Washington, D. C. The American Political Science Association was represented at the conference by Professors Jesse S. Reeves, Blaine F. Moore, and Frederic A. Ogg.

Under the joint direction of Drs. Paul Mantoux and Willian E. Rappard, the Postgraduate Institute of International Studies (Institut Universitaire de Hautes Études Internationales) at Geneva, established early in 1927, has become an important educational enterprise.

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Though coöperating closely with the University of Geneva, the Institute is an independent organization, drawing its financial support from the canton of Geneva and the Swiss Confederation, with aid also from the Rockefeller Foundation. Seminars and courses of lectures are given during the period from October to July, mainly by European scholars, but usually with the coöperation of one or more Americans. During a portion of the year recently ended, Professors James W. Garner, of the University of Illinois, and Ernest M. Patterson, of the University of Pennsylvania, conducted seminars and gave lectures. During the second half of the coming year, Professor Pitman B. Potter, of the University of Wisconsin, will give a lecture course on the fundamental principles of international organization and will conduct a seminar dealing with selected topics in the same field.

The New Jersey legislature has made provision for an extensive survey and fiscal overhauling of the state government, the task to be carried out under the direction of Governor Larson, with the assistance of a special legislative committee. The governor has engaged the National Institute of Public Administration to supply the technical services in carrying on the survey and installation work. Mr. A. E. Buck will have general charge. The projected inquiry is to be much broader than the usual study of this kind. The various departments, institutions, and agencies of the state are to be examined with respect to their organization, personnel, and administrative methods; a thorough analysis is to be made of the existing state tax system and of the miscellaneous sources of revenue; an audit of the general accounts is to be carried out, on the "test check" basis, for the latest fiscal year; a central accounting system is to be devised and installed, embodying methods and procedure for the establishment of budgetary control; and a cost accounting system is to be devised for the charitable, penal, and correctional institutions of the state. A study of personnel and personnel administration has been carried on during the summer by Professor Morris B. Lambie, of the University of Minnesota.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

The American Secretaries of State and Their Diplomacy. SAMUEL FLAGG BEMIS, Editor. J. Franklin Jameson, H. Barrett Learned, and James Brown Scott, Advisory Board. (New York: Alfred A. Knopf.)

Volume IV. *John Quincy Adams.* By DEXTER PERKINS.
Henry Clay. By THEODORE E. BURTON.
Martin Van Buren. By JOHN SPENCER BASSETT.
Edward Livingston. By FRANCIS RAWLE.
Louis McLane. By EUGENE IRVING MCCORMAC.
John Forsyth. By EUGENE IRVING MCCORMAC.
(1928. Pp. ix, 392.)

Volume V. *Daniel Webster.* By CLYDE AUGUSTUS DUNIWAY.
Abel Parker Upshur. By RANDOLPH G. ADAMS.
John Caldwell Calhoun. By ST. GEORGE LEAKIN SIOUSSAT.
James Buchanan. By ST. GEORGE LEAKIN SIOUSSAT.
(1928. Pp. ix, 436.)

Volume VI. *John Middleton Clayton.* By MARY WILHELMINE WILLIAMS.
Daniel Webster (Second Term). By CLYDE AUGUSTUS DUNIWAY.
Edward Everett. By FOSTER STEARNS.
William Learned Marcy. By H. BARRETT LEARNED.
Lewis Cass. By LEWIS EINSTEIN.
Jeremiah Sullivan Black. By ROY F. NICHOLS.
(1928. Pp. x, 457).

Volume VII. *William H. Seward.* By HENRY W. TEMPLE.
Elihu B. Washburne. By JOSEPH V. FULLER.
Hamilton Fish. By JOSEPH V. FULLER.
William M. Evarts. By CLAUDE G. BOWERS and HELEN DWIGHT REID.
James G. Blaine. By JAMES B. LOCKEY.
(1928. Pp. ix, 341).

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Volume VIII. *Frederick T. Frelinghuysen.* By PHILIP MARSHALL BROWN.
Thomas Francis Bayard. By LESTER B. SHIPPEE.
James Gillespie Blaine (Second Term). By JOSEPH B. LOCKEY.
John Watson Foster. By WILLIAM R. CASTLE, Jr.
Walter Quinton Gresham. By MONTGOMERY SCHUYLER.
Richard Olney. By MONTGOMERY SCHUYLER.
(1928. Pp. ix, 367.)

Volume IX. *John Sherman.* By LOUIS MARTIN SEARS.
William Rufus Day. By LESTER B. SHIPPEE and ROYAL B. WAY.
John Hay. By A. L. P. DENNIS.
Elihu Root. By JAMES BROWN SCOTT.
Robert Bacon. By JAMES BROWN SCOTT.
Philander C. Knox. By HERBERT F. WRIGHT.
(1929. Pp. ix, 428.)

Volume X. *William Jennings Bryan.* Anonymous.
Robert Lansing. By JULIUS W. PRATT.
Bainbridge Colby. By JOHN SPARGO.
Charles Evans Hughes. By CHARLES CHENEY HYDE.
(1929. Pp. ix, 484.)

This series, of which the first three volumes have been noticed previously in this *Review*,[1] is now complete, carrying the accounts of the services of the secretaries of state down to the close of Mr. Hughes's secretaryship in 1925. Volumes IV to X include sketches of forty incumbents of the office between 1817 and 1925. The matter of perspective, to some extent a criterion of impartiality, at once suggests itself, as evidenced by the amount of space devoted to each secretary. Certainly the number of years in office is not determining, nor should it be. Of those who have served over seven years, J. Q. Adams is allotted 111 pages, Forsyth 42, Seward 115, and Hay 74; while of the four-year incumbents, Buchanan is given 101 and Calhoun, with one year, is complimented with 106. Nor are the contributions made by each to American foreign policy the index of measurement. Webster's two years under Tyler receive 64 pages, and to his successor, Upshur, holding the office for seven months, are given 57. Marcy, a four-year tenant, is allotted 149 (the most of any in the whole series),

[1] Vol. 22, p. 202 (February, 1928).

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and Root receives 89. All of which merely serves to show the editorial difficulties "among jealous authors" involved in such a series of monographs, which, taken together, go far toward giving an impressive and connected survey of American foreign policy.

The general plan pursued in the first three volumes has been followed throughout the series. To each volume the editor contributes a concise introduction, which usually stresses the more important conclusions reached by the author of each essay. Sometimes the editor manages to sum up a secretaryship with a pregnant sentence, e.g., with reference to Webster: "In foreign affairs as in domestic politics he was advocate and master of humane and sensible compromise" (vol. 6, p. viii). Each author has faithfully undertaken to write a fresh study based upon source materials, usually the State Department archives; yet each has just as faithfully gone through the secondary authorities, many of which are monographs of recent date. All of this is shown abundantly by the generally excellent bibliographical apparatus appended to each study. Typographically, the series is admirable.

When one comes to examine the individual contributions, it becomes difficult, if not invidious, to rate them as to merit. In some cases the study has been entrusted to a scholar who has already made the field his own. This is particularly the case with Professor Perkins's *J. Q. Adams*. It would be difficult to find a clearer discussion of the origin and setting forth of the Monroe Doctrine than here. As to Marcy, Dr. Learned has made a substantial contribution. He has thrown new light upon the Ostend Manifesto and in general gives a picture of Marcy that is decidedly impressive. Therefore one may not cavil at the length of this study, which might have gone somewhat more into detail as to the original terms of the Gadsden treaty, so long held secret by the Department of State. As to the other secretaries, some of them reflect the enthusiasm of the author for the subject. This is particularly so with Mr. Lockey's two studies of Blaine. Intimate association with the subjects has permitted the authors of the essays on Root and Hughes (Dr. Scott and Professor Hyde, respectively) to make authoritative contributions which, while naturally favorable, are not merely laudatory. Sometimes a secretary is portrayed with some brilliancy of style. This is the case with Evarts, done by Mr. Bowers and Miss Reid. Dr. Fuller has made Fish an engaging figure in an exceedingly interesting study.

Perhaps after surveying all of the forty sketches there lurks in the

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memory an impression that each secretary has received at least his share of glory, and that some have received a little more than that. Not all secretaries of state have been great men. Some of them have not been competent secretaries. No amount of writing could make Forsyth a great man, Frelinghuysen a great secretary, or Cass a competent one. Nor, may it be suggested, can Bryan be so made, even if served up, as here, anonymously. Frankly, it seems strange that in such a series an anonymous contribution should have been admitted, even if the author be vouched for as having had "unusual access to and intimacy with the sources of that politician's years as secretary of state," as the editor informs us (vol. 10, p. viii). Even so, he reveals little.

In the notice of the first three volumes it was suggested that frequently one is in the dark as to just what is the "diplomacy" of the particular secretary of state and what is the foreign policy of the president under whom he served. Working out the respective contributions of each, Professor Perkins has been unusually successful in doing this with J. Q. Adams. So has Dr. Learned with Marcy, Senator Burton decidedly less so with Clay. In treating Cass, Mr. Einstein frankly avows that Buchanan was largely his own secretary of state, while Sherman is a pathetic figure, in which McKinley and Day overshadow the subject. Professor Dennis's treatment of Hay is admirable, but, as he has abundantly shown elsewhere, Roosevelt determined foreign policies in many matters of vast importance.

Space forbids more extended treatment of the various essays. The series as a whole is excellent. One feels, now and then, the need of such a corrective as Garner's *Foreign Policies of the United States.* Certainly, to understand the foreign policy of the nation one must study other characters in addition to the titular heads of the departments. The Roosevelt and Wilson administrations are perhaps the best examples of this. But the designers of the series set their own task—to bring into strong relief the secretaries of state. This has been done creditably, and the series will be found indispensable to the student of American foreign policy and to the general reader.

University of Michigan. JESSE S. REEVES.

Canada and the United States: Some Aspects of the History of the Republic and the Dominion. By HUGH L. KEENLEYSIDE. With an Introduction by W. P. M. Kennedy. (New York: Alfred A. Knopf. 1929. Pp. xvii, 396, xlii.)

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Empire and Commonwealth: Studies in Governance and Self-Governance in Canada. By Chester Martin. (Oxford: Clarendon Press. 1929. Pp. xxi, 385.)

Canada in the Commonwealth: From Conflict to Coöperation. By Right Hon. Sir Robert Borden. (Oxford: Clarendon Press. 1929. Pp. xii, 144.)

These three books have authority and a certain unity. The first two are based upon thorough research in manuscript material, the third is a summing up by a former prime minister of Canada of its course of development from petty colonial status to political equality with Great Britain in which, by consent of all concerned, and especially of Great Britain, the self-governing dominions are, with Britain herself, "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs." Today, as Mr. Keenleyside says, Great Britain would be as likely to send political orders to Paris or Washington as to Ottawa.

Mr. Keenleyside's account of the relations of Canada with the United States covers friendly relations and great and minor causes of difference, and their number and variety will surprise some readers. British Canada was first peopled chiefly from the United States: Nova Scotia, New Brunswick, and Ontario by Tory exiles at the time of the Revolution, and later both Ontario and the West by settlers. Canada is the only country to which there has been a migration of population from the United States. The movement in the other direction has been, of course, more extensive since the middle of the nineteenth century, but today, while about a million Canadian-born live in the United States, nearly four hundred thousand American-born live in Canada. Probably the exchange tends to favor Canada. She sends chiefly laborers seeking employment, while the United States sends chiefly farmers with some capital.

The author notes, one by one, the causes of friction in the past. From the first, "Manifest Destiny" caused many enthusiasts in the United States to claim the whole continent. This was the chief cause of the war of 1812; it stirred active sympathy in the United States when, in 1837–38, Canada was menaced by civil war; it had some share in causing the House of Representatives to protest in 1867 at the federation of Canada as a violation of the Monroe Doctrine; and it led to extravagant claims in disputes about frontiers.

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Of more moment is the triumph in both countries of good sense in every crisis, and one chief result of Mr. Keenleyside's thorough research is to show that, in the main, justice was done. He has, however, no high opinion of the capacity of Oswald, who, in 1783, might have done better for the Canada of the future in the peace, nor of Roosevelt's methods in regard to the Alaska frontier. But settlements of disputes softened hostility, and it is probably true today that no other nation in the world is more deeply friendly to the United States than Canada. Canadian statesmen are not disturbed by flamboyant claims in the press to moral superiority compared with other nations; by shouts of "We Won the War;" or even by severe tariff burdens imposed on Canada's trade by her only neighbor. Canada, indeed, gets a certain comfortable complacency in observing the relatively smooth working of her British parliamentary system compared with the frequent strife between the executive and the legislative power in the United States and the paralysis of foreign policy by the power of a minority in the Senate to reject treaties. Mr. Keenleyside's book is impartial, the style is good, and the research so thorough that his notes form an adequate list of authorities. Some minor errors, such as "Goldwyn" Smith, Lord "Shelbourne," and "Sir" John Simcoe, should be corrected in a new edition.

Professor Martin's book covers three successive phases of evolution: the first British Empire, all but ended by the American Revolution; the second Empire; and its passing into the third phase of a Commonwealth of Nations. The only British legislature in North America to survive the American Revolution is that of Nova Scotia, and two of the six long chapters deal with its growth into control of its own affairs. The chapters on "The Old Colonial System" and "New Subjects in Quebec" are fully documented and form a valuable addition to the literature of the American Revolution. In his discussion of the origin of the Quebec Act, Professor Martin controverts two views long current in British circles: one, that it was a successful *eirenicon* to the French population; the other, that it was not inspired by any desire to coerce the colonies in case of need. Many quotations show that Sir Guy Carleton, from his first days as governor of Canada, intended, if the need should come, to use Canada as a basis to coerce Boston. Long before war broke out, he planned so to unite Quebec and New York by forts as to drive a wedge between New England and the other colonies and thus prevent their common action. His influence in shaping the Quebec Act was kept secret and

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remains so, but Professor Martin shows beyond doubt the coercive purpose of his policy, which justifies in part Alexander Hamilton's rather hysterical fears for liberty in the colonies. Carleton was a good general, but his lack of political insight is proved by his absurd plan to depend on the recently conquered French Canadians for military aid.

Professor Martin's two concluding chapters explain the older Canada's passage from colonial to dominion status and liberty, and also some anomalies in the present British Commonwealth. The Parliament of Great Britain still has, over the whole British Empire, the supremacy challenged at the time of the American Revolution. This is useful in law, while at the same time Parliament legislates for the dominions only as a *deus ex machina*, at their request, a truly British compromise.

Sir Robert Borden's book consists of his Rhodes Memorial Lectures at Oxford in 1927. They include a rapid sketch of the history of Canada, but their special interest is in Chapters x to xiv which cover the "bloodless revolution" from colony to nation. As prime minister of Canada, Sir Robert Borden shared in making the treaty of Versailles. His insistence upon the recognition of Canada as a full nation in the same sense that Great Britain is a nation startled both France and the United States, but he gained his point. There are touches of quiet humor in his story of the awakening from "dreamland" in official circles. As a result of his firmness, Canada now sits as an elected member of the Council of the League of Nations, and in the absence of the United States really represents North America in the League's work.

GEORGE M. WRONG.

University of Toronto.

Rivalry of the United States and Great Britain over Latin America, 1808–1830. By J. FRED RIPPY. (Baltimore: Johns Hopkins Press. 1929. Pp. xii, 322.)

These Albert Shaw Lectures deal with a theme which has often been handled at Johns Hopkins since Professor Latané delivered his pioneer course in 1899. There has been an immense accumulation of material on this subject since that date, and particularly on the period which Professor Rippy has chosen. It is only natural, therefore, that, despite the obvious care with which he has combed the archives of the State Department and the Foreign Office, there is nothing very new or

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startling in the material which he submitted to his hearers. Nevertheless, he has made a distinct contribution to our knowledge of the period.

The book is about the rivalry of the two countries, and naturally that rivalry is stressed rather than the common interests of both. Their agents in Central and South America did, indeed, often indulge in a rivalry which was generally futile, sometimes comic, and, on the whole, largely without influence on the course of events. Few were men of much discretion or intelligence. The Americans were apt to be amateurs, with all the amateur's desire to enhance his own importance, while the British were generally men of no great standing in their profession. Hence an inevitable and unedifying series of reports to both Washington and London and silly contests for prestige and influence. Occasionally these had some effect on the commercial interests of the two countries, but for the most part these interests were determined by large causes over which the diplomats had no control.

Most of the book is based on the reports of the agents. It is only occasionally that their chiefs in London and Washington pay much attention to the complaints and plans. The duels between Castlereagh and Canning and Adams have been so much discussed on both sides of the Atlantic that Professor Rippy, perhaps naturally, passes them over rather hastily, and the result is that the main lines of policy are blurred. The plan of establishing monarchies in South America was buried in the grave of Castlereagh, and both the Monroe Doctrine and Canning's famous boast were merely diplomatic statements which had no great effect at the time. Nothing, indeed, could be made clearer than the insignificance of the Monroe Doctrine during this period; while such plans as existed in South America for the establishment of monarchy received no encouragement in Britain, either from Canning or from his successors. Professor Rippy stresses the attempts of the United States to associate the new countries with the American attitude toward maritime rights. But these had little importance in the main issue, and only rarely did they give much concern to statesmen at home.

The truth is that Professor Rippy, like many other historians, is apt to exaggerate the importance of South American policy in the relations of the two countries. British statesman thought of it but rarely and Americans only occasionally. Even in this period, Britain had begun to make that distinction between the Caribbean and the

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rest of South America which was gradually worked out during the century, and which serves perhaps as the key to the problem. Both sides were cautious to the verge of pusillanimity. Neither followed up high-sounding words with action. This last statement is particularly true of the United States, and the Panama Congress shows how near the ridiculous always was to the sublime. Professor Rippy has hardly appreciated the great merits of American diplomacy, else he would not have hazarded, even in a qualified sense, the statement that "for the period and events treated by the volume here presented the record of the United States has in it something of the heroic." It is just because American statesmen, and especially the greatest of them all, avoided the heroic, while not despising heroics, that they obtained all that was essential without incurring any unnecessary risk.

University College of Wales. C. K. WEBSTER.

A History of Political Thought in the Sixteenth Century. By J. W. ALLEN (New York: The Dial Press. 1928. Pp. xxiv, 525.)

This is an altogether admirable book. The author takes us through all the varied, changing political thought in the sixteenth century, in Germany, England, France, and Italy. He seems to have read, not, of course, all that was written on political theory—that would be impossible—but a vast deal more than is ordinarily read by students who are trying to understand the political thought of the sixteenth century. Only a specialist in the same field could review this book adequately. An amateur in the subject like myself can only record the impression it makes on one. This is that here is a man who reads all the authors for himself, looks at them with his own eyes, and has tried first of all to understand them, to see what they aim at, and not to use them to point morals or enforce existing theories or to fit into some prearranged scheme. Particularly striking in this respect are the accounts of Bodin and Machiavelli. The exposition is illuminated by the author's shrewd, dry comments. He says himself in the introduction that if he has written the book as he should have written it, none will be able to say what his own opinion is on any of the questions discussed, or whether he has one. It is perhaps the prevailing error of the author to think that; but he certainly lets us see enough of his rather sceptical mind, of his hatred of what he calls loose generalizations, and his demand for clear and definite statements, for us to know a good deal of his likes and dislikes.

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Admirable as Professor Allen's account of his numerous writers is, the book as a whole raises some interesting questions. He does not really think that there is such a thing as "the political thought of the sixteenth century." He thinks that there were a lot of people who thought about politics and the state, who believed, as some people say, propositions to be true about the state. He is almost as convinced as any Marxian that political ideas are the "ideological reflection" of economic or social circumstances, though nothing would induce him to describe his belief in that disgusting language. His scepticism, in short, has an admirable effect in preventing him from putting these words in other people's mouths, but it makes him deny the existence of the man for the time. "My thought and your thought and his thought, however flatly contradictory, if taken together, actually make up modern thought;" and again, "the political thought of a period is to be found rather in the writings of obscure or anonymous persons than in the work of writers whose real distinction and originality makes them untypical." That last sentence is such a paradoxical statement that it will not really bear examination. For the last part of it really implies that there is no such thing as "the political thought" to be found anywhere.

In spite of all this, Professor Allen thinks that there are in political theory certain fundamental questions which are asked at all times, though in different forms, and which none ever succeeds in answering, though he never says what these questions are. All political theory is reflection on society and political relations, things constituted by men's actions and attitudes, and it is very difficult to understand how there could be unanswerable questions in regard to it.

This sceptical attitude is a welcome reaction from the view that there is such a thing as *the* theory of the state, a body of doctrine true and applicable at all times and under all conditions, to which different political theorists have made specific additions—a view which assumes, for example, that if Aristotle and Hobbes differ in any particular, one of them must be wrong. But it is surely a reaction too far in the other direction.

Greek political theory is surely not just the remarks of Plato plus the remarks of Aristotle about the state, plus the remarks of the Sophists and the *obiter dicta* of Thucydides and Euripides and the rest. It is the theory of the understanding reflection on the Greek city state, expressed in Plato and Aristotle better than anywhere else, but nowhere expressed completely. This is the sort of vague

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idea which Professor Allen dislikes, but which we are to suppose the political theorist is trying to achieve. Is he not concerned with trying to understand something that exists—the city or the state—and does he not find that this object of his exists in so far as men think and act in certain ways and believe certain things to be right and obligatory?

The theorist who is trying to understand the state is studying, not abstract obligation, but a regard for obligation, superior duties which make law and social relations possible. This network of superior rights and obligations which makes law and politics possible differs at different times and depends upon historical circumstances; but, although because of this there is no such thing as a theory of the state, there surely are theories of types of state, and the great writers are more worth studying than the small ones because what we want to understand is the thought which makes the state at any time what it is, and to that the great writers give better expression than the others.

If Professor Allen were writing about the seventeenth century, this, or something like it, would have been obvious. But the sixteenth century is a century of transition from one kind of state to another. The assumptions of the medieval state were breaking down, the new ways of thinking about social relations which were to produce the absolutist state of the seventeenth and eighteenth centuries were just coming into being, and such a thing as a theory of the state was not really possible. All we learn (and that is a great deal) is a most various questioning of old assumptions and all kinds of new beginnings which are going to make possible a theory of the state in the next century. What we want to learn about such a period is the way in which the new conditions actually struck all kinds of people, and that Professor Allen gives us to perfection. It might perhaps have been better to leave it at that, instead of quarreling with what are, after all, Professor Allen's *obiter dicta* on political theory in general. But those are so challenging that it was difficult to avoid saying something about the questions they raise.

A. D. Lindsay.

Oxford University.

State and Sovereignty in Modern Germany. By Rupert Emerson. (New Haven: Yale University Press. 1928. Pp. xi, 282.)

In Germany the jurist occupies a position of far greater importance than in any of the Anglo-Saxon countries. "The jurist in high places," Emerson points out, "must be at once philosopher and political theo-

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rist, as well as student of law and laws." This accounts for the fact that in Germany works on the theory of the state and on constitutional law are hardly distinguishable, and that "if one would seek works on *allgemeine Staatslehre* . . . . one must look primarily to the jurists."

In the historical introduction the author traces German political reasoning from Frederick the Great's lofty idea of the state to the communist or pluralist doctrines of Marx and Engels. Without predilection or aversion for any particular theory, Emerson tries to see, to understand, and to be fair in presenting what he has thus seen and understood. With a sympathetic touch, he endeavors to demonstrate the element of determinism in the relation of political reality and theory. Speaking of Humboldt's attempt to limit the omnipotence of the state, he reminds his readers that "the day of individualism was passing rapidly with the French nation, led by Napoleon, sweeping across Germany." He realizes that "if it had been possible up to that time virtually to ignore the state as an historical reality . . . . , it was no longer possible when, for lack of a state, the German nation had become the plaything of imperial Napoleon."

In the chapter dealing with the German Empire of 1871 and its jurists he shows how the appearance of the new Imperial constitution marked a definite beginning of a new school of jurisprudence. "The era of natural law which preceded the French Revolution found its antithesis in the era of positive law which followed the founding of the North German Confederation and the proclamation of the Empire five years later. Kant, Hegel, Savigny, Stahl, and Bluntschli may be taken as representative figures of the juristic thought of the first two-thirds of the century; after 1871 they were replaced by a new school, at the head of which stood Paul Laband, at once the most able and the most rigid exponent of its principles."

In the succeeding chapter the author concerns himself with the jurists' attempts to solve the complicated problem of modern federalism, and with the reaction to the positivist school as manifested in the endeavor to establish in its place a pure theory of law, which in turn led to the conception of sovereignty without independence and to the theory of supremacy of international over municipal law as propounded by the writers of the Viennese, or Austrian, school. It is indeed a trifle venturesome for Mr. Emerson to include the writers of the Viennese school in a book on German political or juristic thought. The Austrians, as he is well aware, are prohibited by international law from being Germans. Still, the authors of this inhibition are likely

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to be kept too busy with the problems of minorities and disarmament to take cognizance of the infraction of their command.

Consistent with his method, Emerson offers us in his last chapter, not an interpretative study of the Weimar constitution, but an objective presentation of the conflicting views concerning the state character of the *Reich* and the *Länder* and the location of sovereignty within the respective units. While it is true that German jurists still make use of the term sovereignty, it is nevertheless important to stress the fact that the republican national constitution does not once employ the term. It speaks of *Staatsgewalt*, which, like the word *Staat* itself, denotes something essentially practical and realistic. In German republican jurisprudence the concept "state" signifies nothing more nor less than the whole German people organized in a body politic for the protection of their social interests against disintegrating influences from within or without. *Staatsgewalt* is the authority or competence delegated by the consent or will of the people to the government thus charged with the task of effecting that protection. As the constitution states, *Staatsgewalt* emanates from the people, i.e., the people politically organized in a group or body, which we have come to call the state. Those who still operate with "the purely juristic concept," sovereignty, are simply using a formula chosen for want of a more fitting term to cover rather concrete questions such as the location of the ultimate decision in matters of dispute between the individual and the group, between Reich and member states, between industry and labor, between church and state, and the like. One can therefore heartily agree with the author's concluding statement, to wit: "... Beneath the theoretical glamour of the problem there is concealed always a significant element of political reality." To the question: Is a *Land* a state?, "the answer will be theoretical and essentially fruitless." But to the question: Is Bavaria a state or a province?, "the answer may be not without weighty political consequences."

In his conclusion the author compares the futile struggle for theoretical sovereignty between the central and component states of the Reich with the general relations of the nation states of the world, adding a final plea for the recognition of the sovereignty of a world federation in which the present nation states will occupy a position similar to that held today by the commonwealths of the British Empire or the German Reich. Contrasting the conclusion with the rest of the book, one cannot escape the feeling that the finale has been

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attached in the fashion of a liturgical appendix. But if conclusions such as this tend to increase the chance of realizing the universal hope for a world federation as described therein, let us by all means welcome such conclusions wherever they appear. For in the prayer for an eventual control of each and every predatory state, no matter how powerful, by an effective world organization, we readily join, even though we may prefer different methods of achieving such a result.

As a non-German historian of German political and juristic thought, Emerson is superb. So deeply has he entered into the spirit of his German originals that they seem to have considerably influenced his terminology and style. To those who are already familiar with at least the fundamentals of German political philosophy, the book will offer pleasurable and profitable reading. In the interest of international understanding, we need more works of this kind.

JOHANNES MATTERN.

Johns Hopkins University.

Éléments de Droit Constitutionnel Français et Comparé. By A. ESMEIN. Eighth Edition, by HENRY NÉZARD. (Paris: Sirey. 1927. Two volumes. Pp. xliii, 648; xv, 725.)

This work, well known to scholars for more than thirty years, has earned an increasing reputation. Although Esmein was no mean political theorist, his favorite and more successful method was historical. The first of these two volumes, entitled *La liberté moderne: Prinçipes et institutions*, is one of the best available general studies of the historical development of modern political institutions. The second volume, which treats of *Le Droit constitutionnel de la République française*, is, as the title indicates, an intensive study of the government of France. Here theory and history play their part; but the treatment is mainly descriptive.

The present editor, who is dean of the faculty of law at Caen, has loyally preserved both the general plan and the actual text of Esmein's last edition. His main purpose is to bring the book down to date. Additions and corrections he encloses in brackets and inserts in the earlier text. This scattering of M. Nézard's contribution tends to hide its very considerable importance. Whoever examines it carefully will find himself wishing that the editor would add to his long list of published studies a comprehensive treatise of his own on the existing problems of actual French government.

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M. Nézard sees these problems and sees them in their relation to the wider problems of all modern democracies. How, he asks, shall we secure in our governing class the requisite technical competence, and how shall we place in their hands the instruments appropriate to their calling? He has little confidence that the suggested limitations on universal suffrage will facilitate their task. Proportional representation tends to aggravate the splintering of parties, and, consequently, to hamper the formation of the majority governments desirable in parliamentary states. It also fosters verbosity and disorder in the representative chambers. Professional representation is equally untrustworthy. Even a successful experience in commercial and industrial affairs is not an adequate preparation for dealing with affairs of state.

What the French government especially lacks is ministerial stability. A publicist of note has suggested that in order to secure this stability Parliament should elect the ministers, or at least the president of the council, for a definite term. This plan, however, if it could be made to work at all, would merely increase the dependence of the ministry upon the chambers. What is needed is just the opposite—not the further unification of governmental powers, but greater equilibrium among them. The chambers in France are already too strong, and even their standing committees are grasping control over the ministry and forcing the resignation of ministers.

The most hopeful remedy would seem to lie in the possible development of the power to dissolve the Chamber of Deputies. At present this power is in abeyance, because of the disrepute attaching to its exercise in 1877, and of the unfortunate constitutional requirement that the assent of the Senate must be secured. If the Senate consents to a dissolution and the deputies of the old majority are returned, the Senate appears to have been condemned by universal suffrage. If the old majority is not returned, its members will seek revenge at the next senatorial elections. The Senate is naturally reluctant to approve dissolution. The president should be able to dissolve without its consent. If his position needs to be strengthened in order to support such a power, the electoral college which chooses him might be enlarged beyond the boundaries of the two chambers.

Thus M. Nézard skirts the most critical of all the problems which confront the student of French government and politics, the problem of ministerial instability. Why do Frenchmen crumble into the small groups whose quarrels wreck ministries? Is it true that France has

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suffered specific and tangible disadvantage from the frequent changes of ministry under the Third Republic? Is there, rather, as many French publicists hold, a positive advantage resulting from the ease with which parliamentary majorities form and dissolve? Why should new issues not disclose new cleavages in the chambers? Is there any tendency among the existing groups to coalesce? Can strong ministries be secured in the absence of the two-party system? If not, how can a division into two parties be promoted? These questions are yet to be definitely answered, and they are questions vital not only to French government, but to parliamentary government everywhere.

H. A. YEOMANS.

Harvard University.

L'Organisation de la Justice à l'Usage des Gens du Monde. BY LOUIS GENSOUL. (Paris: Librairie de la Revue Française. 1928. Pp. 231.)

This book describes in a beautifully clear and simple manner the organization and work of the French judicial system. The author has had many years of experience as attorney, prosecutor, and judge, and consequently is able to illustrate his description with a number of interesting episodes from his professional career. In the preface we are told that the book was inspired by the persistent questions of a hostess in Algeria, a pleasantry which is maintained in the succeeding chapters and gives opportunity for delightful flashes of humor. In view of the author's splendid style and his accurate insight into the working of the tribunals, it is unfortunate that he should have limited himself to description of the ordinary courts, civil, criminal, and commercial. The value of the book would have been tremendously increased had he included a discussion of the "conseils de prudhommes," the juries of expropriation, and, above all, the administrative courts.

The task which M. Gensoul sets himself is to explain rather than to criticize. The only features of the judicial system which evoke adverse comments are the railroading of cases in the police tribunals and the malfunctioning of the jury system. With respect to the latter, the author, in spite of an obvious attempt to do so, is quite unable to restrain his indignation at the lack of intelligence, independence, and ability which the jurors display. He cynically observes, however, that it is useless to speak of the jury's abolition, and he fears that even his modest suggestions for the modification of the commissions charged

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with establishing the jury lists and the reduction of the size of the jury have only slight chances of adoption.

An important feature of the book is the space given to the work of the too often neglected assistants of the court. The discussion of the procedure and jurisdiction of the various tribunals is excellent, but it would be merely the roughest outline without the vivid descriptions of the court chambers, the robes worn by the participants, and particularly the functions and professional organization of the various officers of the court such as the *avocats, avoués, huissiers, procureurs, greffiers,* and *juges d'instruction.* The description of the French process of indictment is particularly clear and valuable. These features make the book an unusually valuable contribution to our understanding of the judicial process. It should be read by every teacher of comparative institutions, not only for the information contained, but also for the breadth of view and manner of treatment. It should certainly be on the reading list of every student of comparative government.

RODNEY L. MOTT.

University of Chicago.

Staatseinheit und Föderalismus im alten Frankreich und in der Revolution. By HEDWIG HINTZE. (Stuttgart: Deutsche Verlags-Anstalt. 1928. Pp. xxx, 622.)

This book is important, in the first place, because it presents a searching and minute study of the Revolutionary idea of federalism, that *ignis fatuus* which tainted with unpopularity everything with which it became associated, from republicanism to the Girondin party. Madame Hintze handles deftly her three reins: federalism as a philosophical concept in the current thought of the eighteenth century; administrative decentralization embodied, before 1789, in the provincial assemblies and, after, in the departmental governments; legislative decentralization, the tenuous but tremendously important indications of which excited wildest fears of national dissolution. She does not tire herself or her reader with any Pickwickian investigation of what was federalism and what was not. She merely assumes that all was not federalism which bore the name, that the word might attach itself to any movement which suggested disunion. Speaking strictly, there was no federalist party in the French Revolution—that is, no party which openly advocated dividing France into eighty-three federated republics. But there were plenty of jealous lovers of union who kept watch

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for signs like astrologers of old and were willing to read in every slight step toward devolution a plan for establishing federation in France. And so through the calumny of their opponents, rather than through any program of their own, the title of federalist came to be ascribed to the Girondin party.

The book is not, however, the mere pursuit of a wayward idea peregrinating through a decade of strife, for the very reason that federalism itself is only one aspect, one incarnation, of a problem ever recurrent in French history—that is, the problem of preventing over-centralization. The federalists of the Revolution would have applied the extreme remedy of dividing sovereignty between the state and the local unit. But this was only one solution. Before federalism was thought of, and long after it had ceased to be thought of, reforming Frenchmen were concerned with decentralizing the administrative system. The hated intendant of the old régime yielded his place to the provincial assemblies; during the Revolution the assemblies gave way to departmental bureaus possessing something like administrative autonomy; then, after the pendulum had swung, under the stress of war and the genius of Napoleon, toward unified executive control, the old agitation against the ministers at Paris was revived and partially recognized by laws passed under the Second Empire and the Third Republic. The most recent attempt at devolution is regionalism, whose advocates desire a vague cultural separateness; theirs is rather a spirit than a project.

The controversy over federalism was a pivotal point in the struggle between centralization and decentralization. The Revolution was the period in French history when all centrifugal and centripetal forces were in action. The need for unity was paramount; the response, rapid, spectacular, almost universal, symbolized by the embraces of the populace in their "festivals of federation,"—those "festivals of the general will." But in contrast to this unity, so vitally important particularly after the outbreak of war, there lingered a persistent distrust of the central government. The people had too lately leashed one tyrant to be willing to install another. Their distrust was reflected, among other places, in the constitution of 1791, awarding almost complete administrative autonomy to the departmental governments; and in the constitution of 1793, which would have provided for twenty-four executives to be appointed from a list submitted by the departments. Such manifestations of an urge toward decentralization became associated with another and quite different urge, that

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of the departments to prevent the Paris government, particularly the Commune, from usurping the authority legally granted to the national legislature. Both tendencies were dubbed federalism; and with that magic word Danton and Robespierre succeeded in blackening the name of republic, for during the early years of the Revolution republic was thought to mean federation. With the same word the Mountain besmirched the Girondins, both before the 31st of May and after, when the Girondins, having been ejected from the National Convention, fled to Calvados and Bordeaux and organized a departmental guard to regain their legal position.

The Girondins themselves protested that federalism was a myth, a "moral monster sprung from the head of a delirious scoundrel." However true this may be, at least two things are certain: that time and time again during the French Revolution a desire for some kind of devolution made itself apparent; and that echoes of federalism resounded in the nineteenth century, notably in the writings of Proudhon and in the Commune of 1871.

HELEN I. SULLIVAN.

Ithaca, New York.

Belgian Problems Since the War. BY LOUIS PIERARD. (New Haven: Yale University Press. 1929. Pp. x, 106.)

This volume, to which Émile Vandervelde, the great leader of the Socialist party in Belgium, has contributed a foreword, contains the lectures delivered by M. Pierard at the Williamstown Institute of Politics in 1928. The first chapter is devoted to a discussion of the "Flemish question," with particular reference to the intellectual difference between Walloons and Flemings. In the second chapter the author presents a subject in which he is personally deeply interested, namely, that of the use of workers' leisure time.

The remaining four chapters are given over to a discussion of the structure, principles, and activities of the *parti ouvrier belge*, or, as it is popularly called, the "P. O. B." These latter lectures contain much that is interesting concerning what from many points of view can be said to be the most remarkable of political parties. More significant than the details as to the origin, membership, and vast coöperative enterprises of the P. O. B. is the point of view of Belgian socialism which is implicit in M. Pierard's words. M. Pierard himself is a fine example of the charming and brilliant "intellectuals" who have been largely the directive influence in the P. O. B. He is an artist-writer-

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politician, a combination sufficiently rare in the United States. His Williamstown lectures were less an attempt systematically to present facts than to interpret and explain a situation the general outlines of which are tolerably well known. This book will well repay the reading of anyone who is interested in Belgium, socialism, social reform, or political parties. The P. O. B. is undoubtedly the best organized political party in the world, being directed by men of exceptional attainments who have known how to remain revolutionists in theory and reformers in practice, and at the same time how to retain the unflinching support of the proletariat. It is this dramatic pattern which M. Pierard has artistically embroidered in his little volume.

THOMAS H. REED.

University of Michigan.

Citizenship and the Survival of Civilization. By SIR GEORGE NEWMAN. (New Haven: Yale University Press. 1928. Pp. 254).

The 1928 series of Yale Lectures on the Responsibilities of Citizenship ranks high in a series that has always been marked by unusual standards of excellence. Taken as a whole, there is no series of publications that has contributed so much toward an understanding of that much-used and little-defined term "citizenship" as the lectures given each year under the auspices of Yale University. Some of the ablest and most civic-minded thinkers of England and the United States are found in the roster of the series. Bryce, Root, Taft, Hughes, Wallas, and Jacks are on the list. By his recent contribution, Sir George Newman deserves a place in this honored group. He speaks not alone as a thinker but as a doer as well, because he has long occupied a place of distinction and influence in one of the most influential bodies in modern government, the ministry of health in England. He writes as both a practical administrator and a scholar, one trained in the fine traditions of British scholarship in the fields of history and political philosophy.

In the early chapters of *Citizenship and the Survival of Civilization* the author reviews the development of the civic idea from the Greeks, who aimed at the good life for an exclusive group of citizens, to modern times, when citizenship embraces the wide brotherhood of man. He pays tribute to Plato and Aristotle for having conceived of the state as the ultimate form of human association, one which comprehended all other forms to the end that men might live and might live happily. To them, Athens was for the Athenians an education in itself, a veri-

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table school of citizenship. But in spite of the emphasis on the identity of the good of the individual and the good of the state, the latter is the end "which alone gave value to all lesser ends."

For fifteen hundred years and more, yes even in modern times, the state remained the end, not merely the means to a fuller life for its citizens. In this respect, the Greeks, Machiavelli, and Treitschke are akin. Nowhere has the doctrine been more consistently adopted than in the teachings of Treitschke and the practice of Bismarck. In this respect, their position is the antithesis of the modern position in which the state has become the means to an end, the end being man and the children of man. With "the people as the legislator," in Burke's phrase, and with the well-being of people as the all-sufficient goal, the state becomes a "*moral* organism."

The Greeks' conception of citizenship is not so different from the modern conception, according to our author, except that the loyalties and responsibilities of today are so much more comprehensive. In neither is the citizen merely a "political animal." In both he is a man with duties toward himself as an individual, called upon to perfect himself physically, mentally, and spiritually; he is also a member of a family with a wide range of duties; he has further obligations to his set, his college, his work-mates, his employer; out of these grow public duties to his village, his county, his nation, and the world of which these are a part. Taken all together, these constitute a series of "diverse loyalties, always overlapping and sometimes conflicting, concentric circles impinging on each other or overlaid, with man himself as their one and only center and with citizenship the common denominator." Interdependence and responsibility are the key-notes of this citizenship.

The gradual growth of this conception is traced through the changes in philosophy and thought and the influences of outward events. Hedonism and utilitarianism, individualism and collectivism, morality and religion are given due consideration, particularly as they developed on English soil. The outward events that supplemented and expedited the thought of the times were four in number: the industrial revolution, which placed economic interests at the helm of the state; scientific knowledge, with its emphasis on law, order, and purpose; the growth and expansion of politics, bringing in its trail social reforms and a new appreciation of international relations; and, finally, the humanitarian movement that found its chief source in the prevailing religious spirit. Through such influences the theory and practice of

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the political state was supplanted by the civic ideal of a cultural civilization in which ethics, morality, altruism, and sacrifice have become dominant factors—a civilization which in very truth takes *man himself* as the measure of all things.

In outlining the implications of good citizenship in this view of the state, Sir George Newman practically identifies, as did Aristotle, the good citizen with the good man. He substitutes for the earlier duty of defending the state the duty of serving it creatively and productively in everyday affairs. If, for instance, business is to be good business, the good citizen will conduct it in all of its ramifications as a public service. In the words of the author, "To work toward the practice of good and sound commerce, medicine, law, education, literature, art, is good citizenship; to create or produce conditions of life conducive to human association, welfare, and integrity, to justice, and equity for all men, is good citizenship; to advance the development of mankind, the concord of nations, and the emancipation of the imprisoned splendors of the soul, this is also good citizenship" (pages 48 ff.). In other words, to the author the life of the good citizen in its whole range and in all of its phases is permeated with and animated by devotion to public service.

The second half of the work deals in a practical way with the "disharmonies" of the body and the mind, as well as of the body politic, with reference to the possibility of a cultural civilization. Special consideration is given to the ravages of disease, physiological and mental, the causes of premature deaths, and the ways and means of producing sound minds in sound bodies. Attention is then turned to a program of internationalism which has as its aim an internationally-minded citizenship. A special section is devoted to the reorganization of industrial life in which quality of production, loyal coöperation between management and workers, low prices, and high wages are stressed. This is followed by a section on social insurance, which is looked upon as a striking object lesson of the reality and method of the new concept of the cultural state in operation.

The final chapter has to do with education in citizenship. This begins with physical nurture and the training of social impulses and ends with the education of the adult, who should find in education the means and inspiration to a fuller life and understanding. In the formal schooling, intelligence is stressed as preferable to knowledge; practical affairs are to be given a large place, because the school is but a vestibule school for the world in which the scholar is to live; the

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development of a sense of communal responsibility, both within and without the school walls, is to receive appropriate emphasis; finally, sportsmanship and the fruitful use of leisure form an important part of the program.

Sir George Newman has made a notable contribution to the literature on citizenship. In defining it, he has proved himself to be historian, philosopher, and practical idealist. In analyzing its implications, he is a constructive and challenging realist. If his conceptions were once wrought into the *mores* of his own people and ours, permeating their whole behavior, not only would Western civilization be revolutionized, but the Christian ideal of peace on earth and good will to men would become the purpose and end of all statecraft and of all economic and social forces.

WILLIAM E. MOSHER.

Syracuse University.

The New Citizenship. BY SEBA ELDRIDGE. (New York: Thomas Y. Crowell Company. 1929. Pp. viii, 357).

Professor Eldridge's *The New Citizenship* is in part a critique of civic education in the United States, and in part a program for the reform of such education. Starting with the thesis that the "sine qua non of competent citizenship is a continuous, intensive, systematic study of citizens' problems by the citizen himself," the author elaborates an optimistic program for the reconstruction of American citizenship. Taking issue with the proposition of Mr. Lippman that the public is a mere "phantom public," incapable of deciding issues on their merits, he visualizes an expansion of the public's ability to judge public questions through the development of primary group organizations wherein citizens will meet face to face for the discussion of fundamental social, economic, and political problems. Such primary groups, organized locally and federated together into state and national organizations, would be composed solely of those fitted for citizenship —an intellectual elite capable of understanding and profiting from such discussions. The new citizens so organized would express judgments on civic questions, select agents for the execution of policies, and participate directly in the performance of civic functions. The author feels that a qualified citizen should spend about four hours daily in study or discussion under the guidance of primary group leaders. Pursuing a systematic course of study which would include a general orientation course in the social sciences, followed by more

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specialized instruction, reigning types of individualism and group centrism would be killed off, the "work conception" of welfare would be exterminated, and the handicraft idea that citizenship is merely a residual interest would be destroyed.

Professor Eldridge's criticism of current civic education goes to show that the failure of popular government, evidenced by declining interest in politics, the domination of parties by professional politicians, and the cultural lag in social progress is due very largely to certain hereditary and environmental factors capable of modification. "The community is constituted," he states, "as regards its personnel, by citizens with interests canalized, limited, and largely monopolized by groups other than the community as such." Disparaging the civic utility of attempts to reduce non-voting, introduce the short ballot and proportional representation, realign political parties, or promote freedom of discussion under an existing propaganda régime, he finds a possible panacea in serious, continuous, progressive study of public questions largely by means of expertly directed discussion groups. It is principally because of the failure of social service agencies, the family, community organizations, existing types of adult education, the church, the press, and political parties to provide the necessary antidotes for prevailing civic poisonings, that stress is laid upon the need for a courageous experiment in primary group training.

For many readers *The New Citizenship* will raise more questions than it will answer. That is its merit. What reasons are there for believing that more generalized study and discussion will generate wisdom in solving great social questions? How is an "ethical sanction of good citizenship" going to be developed to give the needed driving force to the suggested procedure? How will primary groups be financed? What reasons are there for supposing that "political cleavages" will not appear within the primary groups? How will the proposed educational program be correlated with our present educational system, or is the latter to be scrapped? How can selective citizenship tests be invented and applied? Where can the requisite number of primary group leaders be recruited? These and many other questions do not seem to be adequately answered by the author. The important problem of civic education as it relates to the desirable rule of the citizen in the modern state remains unsolved, although *The New Citizenship* proposes an experiment that may be worth trying.

HARWOOD L. CHILDS.

Bucknell University.

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Die Masse und Ihre Aktion; Ein Beitrag zür Soziologie der Revolution. By Theodor Geiger. (Stuttgart: Ferdinand Enke. 1926. Pp. viii, 194).

This little book seems to me a very important contribution to our political-social literature, though outside of Germany it is not yet sufficiently recognized. The author combats the looseness of the terminology concerning the meaning and significance of mass phenomena. He demonstrates the confusion created by such writers as Le Bon, Sighele, and others who do not discriminate between the various and varied species of mass manifestations, but treat very often as one and the same thing such heterogeneous combinations of individuals as an accidental street gathering, a chance mob uprising, a theatre crowd, a parliamentary body, an ecclesiastical gathering, or a consciously revolutionary mass. Mr. Geiger emphasizes the necessity of a differentiated study of all these manifestations, and devotes the greatest part of his essay to an analysis of the revolutionary mass as the most important phenomenon in the period of social crises.

It has become almost a custom to regard the rule and action of the masses as belonging exclusively to the field of social pathology, as an entirely useless and irrational outburst of popular passions aroused and led by unscrupulous dėmagogues. This attitude of despising or ridiculing the actions of the revolutionary masses is vigorously repudiated by Mr. Geiger, who in many instances shows the inadequacy of the analysis of Le Bon, Sombart, and other exponents of a haughty intellectualism. It is true that the aim of the mass is always anarchy, but its very function consists, according to the author, of the elimination of petrified social structures which make a new and more reasonable equilibrium of social forces impossible. Therefore, the mass cannot be regarded as a bundle of wild animal instincts, but sometimes is a necessary instrument of social evolution in the interest of a higher supra-individual logic.

This conception diminishes the importance of the leaders of the masses. The leader "does not determine behavior of the mass, but he is a leader because he more sharply accentuates the behavior of the mass." The mass does not receive a will or the purpose of a will from its leader; its activity merely becomes more intensive and more pointed because of him. Political clubs and sects which pullulate in revolutionary periods are not the real sources of the revolutionary mass movement, but only reservoirs of potential mass leaders. It is similarly erroneous to speak of the contagion by which revolutionary masses are

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created. The mass is always the primary thing. Contagion is only a consequence of it. To speak of a "mutual contagion" is nonsense. What certain writers denote by this unclear term is simply the accentuation of tendencies already existing. "Mass suggestion" does not mean that something is suggested to the mass, but that a certain suggestion emanates from it. In this way the author sees in the mass a kind of social protest against the over-mechanization of institutions which have lost their real function.

Though the author's analysis is sometimes biased by his sympathy with Marxist socialism, one cannot deny that his book is a necessary antidote to many hasty hyper-intellectual generalizations.

OSCAR JÁSZI.

Oberlin College.

The Structure of Politics at the Accession of George III. By L. B. NAMIER. (London: Macmillan and Co., Ltd. 1929. Two volumes. Pp. xiv, 290; vi, 291–616).

There are three theories about English parliamentary life in the eighteenth century. The first is that it was a battle between two parties, one high-principled and the other dangerous to the empire-that-was-to-be. The second is that it was a scene of unparalleled corruption. The third is that it was much like any other period in the life of any parliamentary nation, except that politics were a little more based on personal interest and a little less concerned with principle than we like to think they are today.

The first of these theories, that of the old-fashioned Whig (or Tory) and imperialist historian, and the second, that of the social historian, are alike denied by Mr. Namier, who nevertheless gives a good many examples of what we ordinarily call bribery and corruption. Mr. Namier holds the third theory, and to illustrate it he presents us with over five hundred pages of discussion, learned, super-documented, and to two classes of readers fascinating: to those interested in the political history of England, and to those interested in the methods of the art of politics, methods which perhaps have not changed much since the days of Bute and Newcastle.

The book is divided into sections. Under two headings, Mr. Namier studies the types of members of Parliament in the eighteenth century, with specific examples. He studies also, first, the constituencies as a whole, and then typical constituencies, namely, the Cornish boroughs, Shropshire, and two "treasury boroughs." He centers his investi-

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gation around the general election of 1761, of which likewise he gives a special study. And finally he takes up thoroughly the question of the secret service money, with the intention of proving that it is not true that the king and his ministers bought majorities with money.

The general conclusion which the reader inevitably draws from the book is that the political situation was one in which public and private, personal and official, royal, ducal, and popular interests were intermingled. The peculiar value of the book is its display of specific facts, and its astonishingly vivid series of pictures. The work exhibits all the learning and intelligence characteristic of the Oxford don who honestly and wholeheartedly devotes himself to the study of politics. The only regret of the student of contemporary governments must be that such English elections as those of 1918 and 1924 have not been studied in the same way.

E. P. CHASE.

Lafayette College.

The Government of Japan. By NAOKICHI KITAZAWA. (Princeton: Princeton University Press. 1929. Pp. xiii, 130).

This little handbook of twelve brief chapters, plus a brief bibliography, an appendix reprinting the Japanese constitution, and an index, is the product of a seminar in comparative government at Princeton University. Its character would hardly suggest its source, since the book is not an intensive study, but, as its author says, "a pen-picture in broad outline" (p. vii). It sets forth the salient provisions of the constitution and explains them clearly, and it introduces a number of enlightening but mainly *ex cathedra* statements upon governmental practices and tendencies. The author exhibits real knowledge of his country's government, though the value of his explanatory remarks is diminished by their brevity. Throughout, comparisons with features of other governments are suggested, but without the analysis of contrasts that would render them enlightening. Japanese authorities are cited. But references to such sources as government documents, court decisions, parliamentary debates, newspapers, or research dissertations are extremely scant. There is no attempt at criticism, either of institutions or of their expositors.

Mr. Kitazawa begins by pointing to the remarkable unity of the Japanese people, which he finds to be breaking down under industrialism and democratic ideology. He continues with a chapter on political history in which the reader is left uncertain as to the effect of the es-

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tablishment of the constitution upon clan government, an uncertainty which the remainder of the book fails to dispel. In a chapter on the constitution, monarchism, constitutionalism, and unitarianism are held to be distinguishing traits. Chapter IV attempts to explain the undoubted distinction between the "Emperor" and the "Throne," an extremely difficult undertaking toward which the author's analysis, if not wholly clarifying, is a contribution. The cabinet is found to be responsible, politically, to the Diet; but unfortunately no effort is given to an exposé of the political forces that play between the two organs. The membership of the lower house is misprinted as 446; it is 466 (p. 73). Although "nobody can deny that the House of Representatives plays a predominant part in politics" (p. 73), it is allotted only two and a half pages. The chapter on the Diet's powers is quite satisfactory as a formal statement, as are those that follow on the judiciary, local government, and parties.

Mr. Kitazawa expresses in his preface the hope that his book "will make some contribution to the furtherance of a true understanding of the Japanese nation." Granting his sincerity and that of many other Oriental students of their own institutions, their published efforts, while valuable, frequently hardly reach the desired goal. The reason may be the pronounced tendency of Oriental students to express the letter only, leaving out the spirit of their institutions. It may be an inferiority complex that induces the presentation of aspects believed likely to please, the omission or glossing over of others. If either of these tendencies exists and thus operates to obscure the full light of fact and criticism which Oriental scholars may cast upon Oriental government and politics, it becomes the first duty of their colleagues and advisers in Western countries to persuade and instruct them toward a more realistic exposition of their subjects.

HAROLD S. QUIGLEY.

University of Minnesota.

American Press Opinion: Washington to Coolidge. By ALLAN NEVINS. (New York: D. C. Heath and Company. 1928. Pp. xxviii, 598).

News is an extremely perishable product. The events which newspapers feature from day to day fade with astonishing rapidity from the public mind. To newspaper men this is both a godsend and a grievance —for while they know that, the public memory being short, they will not be held to strict account for what they say, they also know that day after tomorrow no one will care a fig for what they say today.

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What is true of news writers and reporters is even more true of editors. "The editor," says Professor Nevins, "no matter how distinguished, writes in water, his page is a palimpsest, on which he expends all his talents, wit, learning, and judgment for the day alone, to be erased with the next sun." Occasionally a phrase, an epigram, or a slogan will endure, but these represent only a pitifully few marching spirits of countless editorial bodies mouldering in the grave. Every well-informed American is familiar with the names of Greeley, Dana, Bennett, Raymond, Bowles, Godkin, but few today ever read their editorials. Every child knows William Cullen Bryant, the poet, but few have ever heard of Bryant, the editor. To rescue the editorial writing of these men from oblivion is a commendable undertaking, and Professor Nevins and his publishers deserve a vote of thanks from all students of American history and government for doing so.

Let no one get the impression that this book is a mausoleum for moribund ideas. No more vitally interesting reading has come to my notice. There are not ten dull pages in the entire book. Persons not entirely deficient in a capacity for enthusiasm or indignation will feel their pulses quicken and their spirits rise upon reading Hamilton's attacks on Jefferson, Bache's denunciations of Washington, Bryant's damning of the Dred Scott decision, Greeley's "Prayer of Twenty Millions," and Henry Watterson's "Vae Victis."

Not the least important and valuable portions of the book are Professor Nevins' brief introductions to the various sections, and his footnotes giving the historical facts necessary to an appreciation of the editorial. This book will not be a best seller, but it deserves to be, for there is no more valuable exhibit in print of the "American mind in action."

PETER H. ODEGARD.

Williams College.

The American Experiment. By BERNARD FAŸ, in collaboration with AVERY CLAFLIN. (New York: Harcourt, Brace and Company. 1929. Pp. viii, 264).

This is not a book of any great importance, or of the same type as M. Faÿ's *Revolutionary Spirit in France and America.* The bookstalls have, of recent years, been glutted with studies, good, bad, and indifferent, of American civilization, among which the works of André Siegfried and the Beards are of outstanding merit. The present work lacks even the profundity which characterizes Mr. Waldo

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Frank's brief study; it is the result of collaboration and is uneven, and the historical chapters, while popular, do not avoid being dull. In the latter half of the book, M. Faÿ's Gallic wit takes the lead. "The editors of the *New Republic* are worthy and legitimate successors of Tom Paine. Their doctrines are those of the so-called radicals—urban laborers, farmers of the Northwest, some professors and students . . . . and a number of women of the world." . . . . "After Versailles, the Americans retired to their tent, opening a flap from time to time to call out precise though disinterested advice in a loud voice." The book has a thesis, which is that of Kudenhove-Kalerghi, of Alfred Weber, of Riou and Romier—the need for Europe to unite in order, in the words of Herr Stresemann at Locarno, that it may not lose that position, as a consequence of the war, which is its by tradition. The federation is apparently to be leavened by a few young Catholic aristocrats with a Mussolinian contempt for democracy as their chief qualification.

The book is more interesting as a study of the French than as a study of the Americans. What, apparently, M. Faÿ sees in America is an Anglo-Saxon civilization moved by a passion for unity and uniformity, which are achieved by the individual finding an intoxicating sense of power through mergence in the mass, and distrustful of thought for its own sake as a disintegrating influence. M. Faÿ's attitude toward his own picture is the every-day European reaction. The united Europe, it seems, is to learn unity from America, but to preserve its own variety and fertility of genius.

One's first temptation is to query M. Fay's statements point by point. On the whole, however, his description is adequately true and perspicacious. What has to be questioned is his highly conventional interpretation of America as the land of the machine, prosperous, enthusiastic, thoughtless—above all, young. A certain sage remarked, *antiquitas saeculi iuventus mundi.* The beginning of philosophy lies in doubt, and most Europeans have yet to recognize that there is any possibility of question of the philosophic basis of their culture. And yet it is not clear that an egocentric culture, resting on the cultivation of subjectivity, introspection, and the inner self, is more beneficial to humanity, sounder scientifically, more satisfying artistically, or more commanding intellectually than a communal-centric culture, in which the link of man with his environment and tools and of man with man is recognized—a culture objective, extrovert, and of the social absolute. It was a prophet of their own

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people, Hegel, who told us that "individuality *an und für sich* is the hall-mark of the devil." But of the things in this philosophy there are more than begin to be included in all M. Faÿ's heaven and earth.

GEORGE E. G. CATLIN.

Cornell University.

Danzig, Polen und der Völkerbund. By HANS ADOLF HARDER. (Berlin: Georg Stilke. 1928. Pp. 134)

Danziger Staats- und Völkerrecht. Zusammengestellt VON HERMANN LEWINSKY und RICHARD WAGNER. (Berlin: Georg Stilke. 1927. Pp. 668.)

Zusammenstellung der zwischen der Freien Stadt Danzig und der Republik Polen abgeschlossenen bedeutsamen Verträge, Abkommen und Vereinbarungen. (Danzig: Senat der Freien Stadt Danzig, 1920-1923 and 1924-1927. Two volumes.)

Entscheidungen des Hohen Kommisars des Völkerbundes in der Freien Stadt Danzig. (Danzig: Senat der Freien Stadt Danzig. 1922-1927. Five volumes.)

Zbiór dokumentów urzedowych dotyczacych stosunku Wolnego Miasta Gdańska do Rzeczypospolitej Polskiej. (Collection of Documents concerning the Free City of Danzig) (Warsaw: The Foreign Office. Three volumes. Pp. 141, 276, 239.)

At the Versailles Peace Conference the German city of Danzig was claimed by Poland as her "free and secure access to the sea," of which President Wilson spoke in the thirteenth of his Fourteen Points. Even the Allied Powers, however, had to acknowledge that "la population de Dantzig est et a été depuis longtemps en grande majorité allemande." Polish annexation of the city and its environs with their some 400,000 inhabitants, over ninety per cent of whom are German, would, therefore, have been a flagrant violation of the right of self-determination of a people—another of the Fourteen Points. As a compromise, an English plan for the establishment of a "free city" of Danzig under the protection of the League of Nations was resorted to. Poland was given equal rights with Danzig in the harbor, which was put under the control of a harbor board, independent of both parties; she also conducts the foreign relations of the Free City, in accordance with principles later laid down by the League and based on the treaty of Versailles; Poland owns and runs the important railways within the Free City, and Danzig is included

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in the Polish customs territory. Whenever Poland and Danzig disagree on their respective rights and duties, either or both parties may appeal for a final decision to the high commissioner of the League, residing at Danzig, and from him to the League Council.

Harder reviews in a thorough and competent manner the relations between Danzig and Poland, and between both and the League, as they result from this unique arrangement. He succeeds in his endeavor to show by the case of Danzig that the working methods of the League have not yet become a rigid system—that, on the contrary, they are flexible and steadily influenced and modified by political developments. Their success or lack of it, their possibilities and limits, are fully discussed. While Harder supports the Danzig, i.e., the German, side, of the question throughout, Polish or pro-Polish contentions are cited adequately and dealt with in a fair way. There is no publication in either French or German—there is none at all in English—which gives as complete a picture of the political and juridical nature of the Danzig question as the one under review. Harder has had the support of the Institut für Auswärtige Politik in Hamburg, and of the Laura Spelman Rockefeller Memorial, in the preparation of his work.

Lewinsky and Wagner is a collection of the more important documents relating to the Free City. The selection is good, and the compilation as such is of great convenience to the student of the Danzig problem. Its value is diminished, however, by the fact that the documents are published in German only, whether or not the official text is in that language. Notes as to what are the official languages of certain documents and where they may be found are lacking.

The collection published under the auspices of the Danzig Senate (the government of Danzig) is a most helpful compilation of League decisions, and of treaties and agreements (in the official texts) between Danzig and Poland, which form the legal basis for the relations between the two countries. The Polish collection, obtainable only from the Warsaw Foreign Office, is of similar character. It gives in all cases the English, French, or German text of a document, besides the Polish. In the English texts, however, inaccuracies are so much more numerous than in the Danzig collection that it is preferable to use the latter.

JOHN B. MASON.

University of Wisconsin.

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The Peace Pact of Paris. A Study of the Briand-Kellogg Treaty. By DAVID HUNTER MILLER. (New York: G. P. Putnam's Sons. 1928. Pp. vii, 287.)

War as an Instrument of National Policy and Its Renunciation in the Pact of Paris. JAMES T. SHOTWELL. (New York: Harcourt, Brace and Company. 1929. Pp. x, 310.)

These two notable analyses of the Briand-Kellogg treaty supplement each other. With marked literary skill, Professor Shotwell contributes a broad historical background and a suggestive, if not wholly convincing, statement of the influence of public opinion on the negotiations, which are lacking in Mr. Miller's lawyer-like treatment. The latter, however, brings keener legal powers to the analysis of the documents. As a distinguished champion of popular diplomacy, Professor Shotwell sets high the contribution of public opinion and unofficial agencies to the result, perhaps prematurely, when one considers what a small proportion of the official conversations and memoranda have thus far been published.

"The Pact of Paris," declares Professor Shotwell, "must be judged, not merely as an expression of international morals, as some of its friends have tried to interpret it, but as the effective embodiment of political realities; unless it has some practical value, it has little value at all." Though both authors are sanguine of the practical value of the pact, they are not always convincing. Is it clear that the exceptions to the renunciation in Article 1 should not be construed as exceptions to Article 2 also? What are the geographical limits to the so-called British Monroe Doctrine? Professor Shotwell thinks Egypt alone was meant, though he points out that the representative of the Foreign Office, when pressed in debate to explain what "regions of the world" were meant, declined to be specific. Mr. Miller believes that Egypt, the Suez Canal, and the Persian Gulf were intended. The definition, of course, rests with the British government.

Both authors conclude that neutrality, in the hitherto accepted sense, became obsolete with the signing of the treaty. "It would be maintaining anarchy at sea, in the name of freedom," declares Professor Shotwell, "if we insisted upon the right to make ourselves the accomplice of an aggressor nation by the free shipment of supplies to it, under the support and protection of our navy." In the eyes of Mr. Miller, the Briand-Kellogg treaty, which he describes as "in fact, though not in form," a treaty between the United States and the

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League, "is an end of the old ideas of neutrality and is accordingly an end of difficulties about sea law."

Great stress is rightly laid by both authors on the need of supplementing the treaty with a more complete system for the pacific settlement of international disputes. In the all-important quest for alternatives to war, the emphasis, Professor Shotwell believes, "should be shifted from Court and Arbitration to Conciliation and Conference." Further progress here is vital. If the world should rest content with the success registered in the pact of August 27, 1928, the peace movement would have been slain in the house of its friends.

JAMES P. BAXTER, 3RD.

Harvard University.

The Legal Effects of Recognition in International Law as Interpreted by the Courts of the United States. By JOHN G. HERVEY. (Philadelphia: University of Pennsylvania Press. 1928. Pp. xiv, 170.)

The problem of the state before a foreign court is inherently difficult. Add the further consideration that the government which brings or defends the suit may be unrecognized, and the complexity increases. Or the controversy may be one concerning private rights, where there is drawn into question some act of an unrecognized government. Many aspects of the problem came before the courts a century ago, during the Latin American wars for independence. Rebellion and reconstruction presented the problem from a new angle. And now the question is, What attitude should the courts assume toward the Soviet government and its confiscatory decrees? In finding our way through the labyrinth of cases, Dr. Hervey has provided us with an excellent guide. The purpose of the book is expository rather than argumentative. The cases are arranged in logical categories and discussed with some fullness. The material is exclusively Anglo-American, the study being in no sense comparative.

The recognition of foreign governments is exclusively a political function. But delay in recognizing a government which has in fact become established is not tantamount to denying its existence. "Facts are facts, in Russia as elsewhere," as Judge Ford remarked in the Sokoloff case. The author approves the decision of the Court of Appeals of New York in the Wulfsohn case that the unrecognized government of a recognized state is none the less immune from suit in our courts. To have held otherwise would have been to invite

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retaliation, and thus to embarass the political branch of the government. In suits concerning private rights the same tribunal has said that "self-imposed limits of common sense and fairness" may require the courts to give effect to some Soviet decrees—for example, in order to protect one who has been the victim of spoliation. Dr. Hervey considers this view of public policy an expedient avenue of escape from the anomalies of the Russian situation. Herein he defends a position quite different from that of a recent French work by Noël-Henry.

In brief, the author has carefully and ably prepared a digest of a complicated body of cases. A number of typographical errors have gone uncorrected, and at the bottom of p. 44 a misquotation has crept in.

CHARLES FAIRMAN.

Harvard University.

The American Year Book: A Record of Events and Progress, 1928. Edited by ALBERT BUSHNELL HART and WILLIAM M. SCHUYLER (New York: The American Year Book Corporation, 1929. Pp. xxix, 892).

The American Year Book is of such great value to the student and teacher of government that it merits something more than brief mention. The latest number, like its predecessors, devotes almost one-half of its pages to data that are primarily concerned with American government, under the headings of American political history, international relations affecting the United States, national government, state government, municipal government, territories and spheres of influence, public finance and taxation, public resources and utilities, defense and armaments.

The list of contributors and their special topics is too long to present in full, but mention may be made of a few who are known to readers of the *Review*, such as Arthur W. MacMahon, on "Congress and Legislative Investigations," and "Significant Federal Legislation;" James Hart, on "The President and his Policies," and "National Statesmen;" Lloyd M. Short, on "Federal Administrative Commissions;" Irving Fisher, on "The Prohibition Controversy;" John M. Mathews, on "The United States and World Affairs," "National and Interstate Relations," "State Legislatures and Legislation," "State Executives and Departments," and "State Administration and Judiciary;" Frederic H. Guild, on "State Constitutions;" Charles Kettleborough, on "Changes in Electoral Laws;" Graham H. Stuart,

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on "Latin American Relations;" A. H. Lybyer, on "Oriental and Near Eastern Relations;" Raymond L. Buell, on "International Conferences;" Milton Conover, on "Personnel Analysis of the Seventieth Congress;" Clinton Rogers Woodruff, on "Federal Civil Service," "City Politics," "City Manager Government," etc; Thomas Adams, on "Metropolitan and Regional Planning;" H. L. McBain, on "The Supreme Court and Constitutional Law;" O. C. Hormell, on "County and Rural Government," and A. E. Buck, on "The National Budget."

The remainder of the volume, dealing with topics of every possible description arranged under the headings of economics and business, social conditions and aims, science and the humanities, contains information which, although not primarily concerned with government, is often closely related thereto.

This is a reference work which should be accessible to every teacher and student of American government.

A. C. HANFORD.

Harvard University.

BRIEFER NOTICES

AMERICAN GOVERNMENT and CONSTITUTIONAL LAW

The latest addition to the "Reference Shelf" Series published by the H. W. Wilson Company is a booklet on *Federal and State Control of Water Power* (pp. 186) compiled by Julia E. Johnsen. Like the other volumes in the series, the present one includes a brief on the subject in both the affirmative and negative, a bibliography of about twenty pages, and some eighteen articles, addresses, or reports on both sides of the question of public ownership and control of water power, by such well known persons as John Bauer, George W. Norris, Gifford Pinchot, C. A. Dykstra, Alfred E. Smith, Judson King, Herbert Hoover, and Arthur T. Hadley. Although it does not strengthen either side of the argument as presented, more attention to interstate compacts would have been worth while. A useful pamphlet on a related subject is *Muscle Shoals and the Public Welfare*, by Marguerite Owen (pp. 45), published by the committee on living costs of the National League of Women Voters. Miss Owen traces the legislative history of Muscle Shoals, discusses the various problems involved, and gives the arguments for and against government operation. She favors government operation. The National League of Women Voters has also published *An Introduction*

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to a Study of the Regulation of Public Utilities (pp. 82), by Julia M. Hicks, which is worthy of special consideration because of its clear presentation of a complicated subject, its careful analysis of the various problems involved, and its impartiality. The study includes sections on the growth of public utilities; the growth of public interest; agencies of regulation; the factors of regulation, such as standards, rate of return, operating costs, and definite percentage returns; the relation between securities issues and the value of the property; the present state of regulation; and methods proposed for further regulation.

State Insurance in the United States, by David McCahan(University of Pennsylvania Press, pp. xviii, 290), is not a study of the arguments for and against state insurance, but rather a comprehensive survey of the actual administration of the various insurance funds established by the American states, such as workmen's compensation funds, pension funds, hail insurance funds, bank and public deposits guaranty funds, public property insurance funds, and life insurance funds. The author concludes, in general, that "if funds, which are essentially self-insurance propositions, are competently managed, scientifically financed, and properly supervised, they should be no more open to attack on the ground that the state is invading the domain of private enterprise than would be similar systems operated by a large industrial corporation. If not conducted in accord with sound insurance principles, or if the political character of the state government peculiarly unfits it to provide an insurance service, then may these funds be subjected to criticism and the wisdom of their establishment questioned. Upon such grounds rest our criticisms of teachers' cash disbursements pension funds, public deposits guaranty funds, public official bonding funds, and public property insurance funds operating on the emergency reserve appropriations plan." Mr. McCahan does not believe, however, that a state monopoly in any field of insurance is desirable, but holds that "competition, sanely regulated, has been the life blood of insurance development in the past" and its "surest pledge of advancement for the future." The study is based largely on first-hand information gathered by personal visits in thirty-seven states, and is a most valuable contribution to the field of public administration.

Those who had the rare privilege of knowing the late James Ford Rhodes personally, and all who have read his books, are indebted

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to M. A. DeWolfe Howe for his biography entitled *James Ford Rhodes: American Historian* (D. Appleton & Co., pp. 375). The author not only presents Mr. Rhodes as an intensely human, active-minded man who turned from a highly successful life of business to scholarship and writing, but he gives us a clear idea of how Rhodes did his work, how he gathered his material, what were his aims and ideals, and why his volumes were so rich in content. For students of government, the book is especially valuable on account of the numerous letters to such persons as Charles W. Eliot, Theodore Roosevelt, Lord Bryce, Lord Morley, Henry Cabot Lodge, Charles Francis Adams, Woodrow Wilson, Sir George Otto Trevelyan, and numerous others during the period 1900 to 1927. There are also a number of memoranda written by Mr. Rhodes after dinners and visits with well known persons. These letters and memoranda are rich with material because they comment frankly and with understanding on important political figures and events. One who starts on this book will not consign it to a place on his book-shelf until it has been read from beginning to end. It should make good summer reading.

A Study of Judicial Administration in the State of Maryland, by G. Kenneth Reiblich (Johns Hopkins Studies in Historical and Political Science, Series XLVII, No. 2, pp. vii, 155), contains information which is valuable to students of state and local government. The author not only describes the organization and workings of the court system in Maryland, but he also includes chapters on quasi-judicial bodies, and on the place of the executive in the administration of justice. Although he finds the Maryland judiciary, on the whole, working satisfactorily, Dr. Reiblich proposes certain reforms such as a greater unification of the court system, the introduction of arbitration and conciliation, the appointment of judges for good behavior, the abolition of the justice of the peace and coroner, and the substitution of indictment by information for the grand jury. He is of the opinion that the newly established judicial council offers the most practicable method for immediate improvement.

Under the auspices of the Institut Français de Washington, the various documents, reports, and letters having to do with Major Pierre Charles L'Enfant's work in the planning of Washington are brought together for the first time in *L'Enfant and Washington, 1791-1792*, by Elizabeth S. Kite (Johns Hopkins Press, pp. xi, 182). There is a delightful introduction by J. J. Jusserand, former French

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ambassador, on "Major L'Enfant and the Federal City," and a foreword by Charles Moore, chairman of the National Commission of Fine Arts. A reproduction of the L'Enfant plan is included. This attractive volume not only throws light on certain phases of the early history and politics of the United States, but is of value to those interested in city planning. One obtains a very clear picture of the difficulties under which L'Enfant had to work, his intense devotion to the project, and the reasons why he was misunderstood, as well as the merits of the plan and the reasons for its final success.

Agricultural Reform in the United States, by Professor John D. Black (McGraw-Hill, pp. x, 511), is a timely and authoritative study of the problems of farm relief. After a survey of the present unsatisfactory status of agriculture and the causes of it, there follows a statement and evaluation of the various proposals for reform. The list comprises not merely the schemes for agricultural price-raising which are now claiming public attention—tariff revision, the equalization fee, export debentures, and the like—but also the more fundamental reforms which are needed in production, land utilization, marketing, transportation, credit, and taxation. It is made abundantly clear that there is no single, and certainly no simple, remedy for this complex and baffling problem. But the author makes a number of constructive suggestions. He has no brief, however, for any one of the many groups trying to secure remedial legislation, and his approach throughout is that of the trained economist. The book is clear and readable and is an important contribution to a vital problem. Another book dealing with the agricultural problem is *America Challenged*, by Lewis F.Carr (Macmillan, pp. 322). Mr. Carr disagrees with the opinion that most of the farmer's troubles are due to the farmer himself. In his opinion, the chief remedy lies in some plan of stabilizing prices, either through government action or by the help of private capital on a large scale. The style of the book is interesting, and there are numerous examples drawn from personal experience and observation.

Ginn and Company has published a helpful booklet on *The Massachusetts Voter: The Rights and Duties of Citizenship in State, County, City, and Town* (pp. x, 177), by Frederic W. Cook, for a long time secretary of the commonwealth. The material is arranged in question and answer form, and although intended primarily as a guide to the voter, the book is a source of reliable information for any one desiring data on state and local government in Massachusetts.

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The Official Report of the Proceedings of the Nineteenth Republican Convention (The Tenny Press, New York, pp. 319) held in Kansas City, Missouri, in 1928, has been published under the supervision of Lafayette B. Gleason, the general secretary of the convention.

The Historical Bureau of the Indiana Library and Historical Department has published *A Bibliography of the Laws of Indiana, 1788–1927* (pp. xxxix, 77), by J. G. Rauch and Nellie C. Armstrong. The compilation begins with the laws for the government of the Northwest Territory. The authors have included an interesting introduction on "Sovereignty and Legislative Authority over Indiana."

FOREIGN AND COMPARATIVE GOVERNMENT

The International Publishers have brought out in two volumes the *Collected Works of V. I. Lenin: the Revolution of 1917*, Volume XX (pp. 381; 428). Whatever one may think of the Soviet government, one may not deny its activity in getting its case before the world. Apart from the active news service which provides us almost from day to day with an account of its efforts in the cause of civilization; apart from the personally conducted tours which produce a crop of books and articles from the pens of their recipients; apart from the perhaps less widely advertised activities of its agents, especially in the East, and the "propaganda" of its champions elsewhere; apart from "Arcos" and "Amtorg" and "Artkino," we have such volumes as those of the present series. The Soviet leaders' professed models, the Jacobins, had no such achievement to their credit, with all of their "correspondence" and "constitutional" societies; but they had, of course, less time, and they were absorbed in war. Naturally, the publishers of the Soviet régime begin with Lenin, whose writings, "revised and edited by the Lenin Institute in Moscow," now begin to be translated. The present ones form, it appears, the story of Lenin in the Revolution of 1917 from March to July, and are to be followed by others covering the period from July to November, which, with their predecessors and successors, will run, on the present scale, to between thirty and forty volumes. They are the speeches, the letters, the reports, the resolutions, and the articles which at once stimulated, accompanied, organized, and directed the Russian Revolution; and, whatever one may think of it or its authors, they are invaluable in studying that movement. The time has not come to determine their historical place or accuracy; but another generation will find in them a rich mine

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to be worked by investigators, critics, controversialists, and even, perhaps, candidates for the degree of doctor of philosophy in at least two fields, that of history and that of political theory. W. C. A.

In *English Political Portraits of the Nineteenth Century* (Little, Brown and Company, pp. 327), J. R. Stirling Taylor has given us interesting critical biographical sketches of seven leading British figures—the first Duke of Wellington, George Canning, the second Viscount Melbourne, Sir Robert Peel, Disraeli, Gladstone, and Queen Victoria. Through the lives of these leaders one may obtain a good idea of English history of the last century. The author is of the opinion that the belief of some historians that Peel was "one of the best and most unselfish prime ministers that Britain has ever possessed . . . . is a judgment based on sentimental fancies and not on the facts." Although Disraeli as a political leader did not measure up to the standards of statesmanship set forth in his political novels, he "did far better than the rest, and several times played with the fringe of his own ideals." In spite of "temptations to be as others were in the political game, he kept his ideals before his eyes and his honour unspoiled." Gladstone is regarded as "a genius—which is a convenient word to express admiration for some one whom we cannot explain or understand. There were only two other statesmen of that high rank in nineteenth-century Britain—Wellington and Disraeli—and the three were as unlike as one human creature could be from another." In Gladstone, "English history was given the honour of having produced one of the few statesmen who have put high principles before low expediency." Queen Victoria is presented as "the most experienced and the sanest statesmen of them all." The book is written in a vivid, clear style and makes interesting reading, although one will not agree with all of the author's conclusions and estimates.

The War and the Russian Government, by Paul P. Gronsky and Nicholas J. Astrov (Yale University Press, pp. xvi, 331), the latest study in the Russian series of the Carnegie Endowment monographs on the economic and social history of the war, succeeds in presenting a wealth of material on a phase of Russia's political development which has been unduly obscured by the fundamental changes that followed the Bolshevik revolution. This achievement is particularly remarkable in view of the fact that documents bearing on the subject are exceedingly scant outside of Russia. Mr. Gronsky ably summarizes the chief aspects of the central government as it existed in

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1914, and traces its transformation during the World War down to the *coup d'état* of October, 1917. Mr. Astrov makes an illuminating study of the organization and activities of the Russian municipalities, and analyzes in detail the tasks performed by the All-Russian Union of Towns, both at the front and behind the lines. The authors maintain throughout the point of view favored by Russian liberals; the facts, however, are set forth with scientific detachment. The value of the volume is enhanced by tables, showing the budgets and expenditures of a number of municipalities, and by an excellent bibliography. V. A. M.

Some Aspects of the French Law, by Junius Parker (Scribner's, pp. 82), includes three lectures given by the author at the University of Virginia on the William H. White Foundation. Mr. Parker traces the history of French law, discusses French penal laws and procedure and constitutional law, and compares some of the concepts, rules, and practices of the French law with those of the United States. In his opinion, one reason for the high quality of the French law is to be found "in the influence that is exercised on the minds of the legislators and judges of France by eminent *juris-consults*—whose great powers, intellectual and spiritual, are given to philosophic thought on law and the society that is governed by law." He also concludes that "in the definiteness of its rules of conduct—leaving out of consideration the matter of the wisdom and justice of such rules; in the prompt and effective method of adjudicating controversies; . . . . and in the feasibility of the development of the law under scientific direction in response to the changing ideas of social and industrial justice, French jurisprudence, in my judgment, excels the jurisprudence of the United States and the states thereof."

The Tsing-hua Political Science Association has issued a *Reader's Guide to Political Literature in China* (National Tsing-hua University, Peiping, China, pp. 61). Part I includes a list of foreign books published in the years 1926–28 dealing with Chinese politics, economics, and foreign relations as found in the Tsing-hua University Library, together with a brief critical comment on each book. To this list is appended a bibliography of China compiled under the direction of W. A. Slade, of the Library of Congress. Part II includes a classified list of articles from six English periodicals devoted to Chinese affairs. The compilers do not claim that the present issue is an exhaustive collection.

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American readers and students of government who have been following with interest the part played in European and international affairs by Gustav Stresemann, Germany's former chancellor and late minister of foreign affairs, will be thankful for an English translation of Baron Von Rheinbaben's *Stresemann: the Man and the Statesman* (pp. 321) which has been published by D. Appleton and Company. The author not only gives us an intensely interesting and human picture of the man himself, but he sets forth clearly the ideals and aims which have guided his actions and the part which he has played in restoring confidence in Germany and in furthering the cause of international peace. There is not a dull page in the book.

INTERNATIONAL LAW AND RELATIONS

The International Aspects of Electrical Communications in the Pacific Area, by Leslie Bennett Tribolet (The Johns Hopkins Press, Baltimore, pp. vi, 282), stresses the great strategic and commercial importance of the control of cable and radio communications. The author states that the amount of economic and political control in the various regions of the earth seems to be almost in direct ratio to the extent of the control of communications and propaganda in these same regions. In the light of this thesis, the rivalry of the British, American, and Japanese interests in the Pacific is discussed. The policy of the United States in not granting monopolies to private companies and in leaving the development of facilities for international communication to private enterprise is contrasted with the government-controlled systems of other nations. The study deals with a subject warranting attention. Careless writing and frequent unsubstantiated generalizations detract somewhat from the work as a whole.

A most welcome aid and stimulus to all students of recent American diplomatic history is Professor Benjamin H. Williams's thoughtful survey, *Economic Foreign Policy of the United States* (McGraw-Hill Book Company, pp. ix, 426). Skilfully sifting and evaluating an extensive body of materials which are often difficult to use on account of partisan criticism or official special pleading, the author has constructed with marked success an interesting and objective account of the diplomacy of investment and of the diplomacy of commerce as practiced by the United States. Though no work of its size and scope could be exhaustive, it is easily the best that has yet appeared on the subject. J. P. B.

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Aspects of Anglo-American Relations (Yale University Press, 1928, pp. xv, 111) contains the first two essays to be published under the annual prize award of the Brooks-Bright Foundation for the two best essays written in each academic year by undergraduate students at Oxford and Yale on a subject dealing with the relations between the British Empire and the United States. K. Capper Johnson, of Queen's College, Oxford, writes of "The Historical Significance of the American Revolution in the Development of the British Commonwealth of Nations;" and John M. Frankland, of Yale, discusses "The Influence of International Trade upon British-American Relations." The first essay is well-written, the second rather trite. J. P. B.

The Naval War College *International Law Situations, 1926* (Government Printing Office, pp. 134), prepared as heretofore by Professor G. G. Wilson, is of special interest at this moment of renewed discussion of the freedom of the seas. The chapter on continuous voyage traces the development of that doctrine from the rule of 1756 through the cases of the World War. The conclusion opposes an extension of the principle to "continuous voyage by substitution." Other topics are angary, aircraft in neutral ports, and the status of the submarine.

America's Naval Challenge, by Frederick Moore (Macmillan, pp. x, 166), is an interesting account, from the point of view of a journalist, of the post-war development in naval armaments, with special emphasis on the naval competition between Great Britain, Japan, and the United States. The author is opposed to a Great Navy program and warns the reader against the slogan, "Give us armament and we will give you peace."

Eagles Black and White (Appleton, pp. 205), by "Augur," is a popular account of the status of the Polish Corridor and of the many perplexing problems that it imposes upon the relations between Germany and Poland. The author stresses its potentiality as an instigator of ill feeling and comes to the conclusion that in accepting the *status quo* lies the only hope for peace. The subject is handled in a fashion to attract the general reader.

"Self-discipline for the individual; self-government for the state; self-restraint for the great international society! These are the cardinal objectives of the politics of peace." Thus Professor Charles E. Martin, dean of the faculty of social science, University of Washington, states

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the thesis of his recent volume, *The Politics of Peace* (Stanford, pp. x, 458). Americanization, bolshevism, and militarism are among the topics discussed.

In *Diplomatic Europe Since the Treaty of Versailles* (Yale University Press, 1928, pp. vii, 130), by Count Carlo Sforza, the former Italian high commissioner in Turkey, minister for foreign affairs, and ambassador at Paris reprints six interesting lectures delivered at the Williamstown Institute of Politics, with some related documents.

POLITICAL THEORY AND MISCELLANEOUS

The Political Thought of Roger Williams, by James E. Ernst (University of Washington, pp. iv, 229), originally prepared as a doctoral thesis, appears as Volume VI, Number 1 of the University of Washington Publications in Language and Literature. The author has attempted to present in systematic form, following conventional lines of organization, the political theories of Roger Williams. There is evidence of thorough and painstaking examination of source materials, and much labor spent in putting selected bits together into a systematic whole. There is, however, a considerable amount of repetition, due in large part to the method of treatment followed. As is true in the case of so many doctoral dissertations, the value of the work is somewhat lessened by the rather labored style in which it is written. The author's main thesis seems to be that historians of the past, attracted by the religious thinking of Roger Williams, have failed to give him his due importance as a political theorist. According to Mr. Ernst, "his principles of religious liberty and liberty of conscience were naturally deduced from the major premises of his political theory" (p. 205). And again we read: "The assumption made by practically all students of Williams, that his theory of the state grew out of his principles of religious liberty and was a mere incidental by-product of it, must be put aside" (pp. 24–25). The case for the importance of Williams' political thinking seems to be well made. Mr. Ernst does a real service in reminding us of his contribution, in stressing the practicality, and, at the same time, the idealism, of his thought. Modern democratic political thought and practice undoubtedly owe much to this early radical, banished from Massachusetts Colony because of his dangerous opinions, and to the "lively experiment" with his ideas which he was fortunately able to carry out on Narragansett Bay. L. M. G.

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The Growth of Philosophic Radicalism, by Elie Halévy (Macmillan, pp. xviii, 554), which originally appeared in three volumes in France, is presented to English readers in one large volume, translated by Mary Morris. The translation as a whole is adequate, but at some points Miss Morris has found it impossible to escape the French. This is indicated in a small way by the retention of "criterium" for "criterion," and by the use of the phrase "spirit of corporation" (p. 117) to describe the institutional obstacles to progress which Bentham would sweep away. The close print will make many readers wish that the translator had been allowed two volumes. Showing as he does the antecedents of philosophic radicalism, M. Halévy must generalize a mass of literature and opinion. It would be remarkable if all his generalizations were universally acceptable. For example, it is hazardous to assert that all utilitarian philosophers refused to admit that sympathy is an "irreducible datum of experience" (p. 503) on a par with egoism. Yet M. Halévy will continue to find adherents to his main theses, which point to the contradictory assumptions of a natural identity and a natural conflict of interests; and to the individualistic postulate which brought the utilitarians back to the "principle of equality of rights" (p. 502). The translation will have served a good purpose if it stimulates English and American students to careful investigation of the more debatable generalizations.

R. O.

Volume six of *Lectures on Legal Topics* (pp. viii, 379), including addresses delivered in 1924–25 before the Association of the Bar of the City of New York, has been published by the Macmillan Company. The addresses of greatest interest to students of government, in general, are "Home Rule in the Light of a Century's Experience in New York City," by Charles L. Craig, comptroller of the city of New York; "The Press and the Courts," by Henry W. Taft; "The Spirit of the Constitution, or More Particularly the Sixth Amendment," by Judge Frederick E. Crane; "The Future of the Supreme Court," by James M. Beck; and "The Bolshevik Constitution from its Legal Point of View," by Henri Sliosberg, formerly of the bar of Petrograd. Mr. Beck believes that the Supreme Court should be relieved of half its excessive burden by restricting the litigation "to cases that the Attorney-General would certify that the government as a litigant had such an interest in that the court ought to hear it, and to private cases where a substantial constitutional question is involved, or to exceptional cases of general importance." M. Slios-

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berg states that in Russia "there is no democracy whatever, ... no vestige is to be found there of the freedom of the press, of speech, conscience, assembly, and there are no guarantees of personal inviolability, no trace of 'habeas corpus' act."

E. D. Simon, formerly mayor of Manchester, England, has written an interesting and informing book, *How to Abolish the Slums* (Longmans, Green, pp. xii, 146). The volume is not, as the title might indicate, a work of propaganda full of generalities, but is based upon a careful study of numerous reports and first-hand investigation. The author first surveys the present housing situation in England, explaining the extent of overcrowding, the work of reconditioning unsatisfactory houses that has been accomplished in recent years, and the post-war development in providing more and better homes for the workingmen. He concludes, however, that in spite of the progress which has been made nothing has been done for the slums since the war, that overcrowding is practically as bad as it was then, that the condition of the houses is actually worse, and that the situation of the very poor remains extremely unsatisfactory. For helping the poorest families, Mr. Simon regards some form of public subsidy as the only practicable scheme.

Professor M. W. Watkins has prepared for the National Industrial Conference Board a volume on *Mergers and the Law* (pp. x, 153) in the series dealing with the relation of the anti-trust laws to various aspects of modern industrial organization. A brief introductory chapter, explaining the development of the status of mergers at common law in England and America, is followed by three chapters on the court interpretation of the Sherman Act as applied to mergers. The emphasis here is upon the concrete working of "the rule of reason." An attempt is made to formulate "several propositions concerning the most moot points of interpretation of the anti-trust laws as applied to corporate consolidations." Although there will probably be no general agreement with these propositions, they will stimulate reflection upon some significant implications of the court decisions. R. O.

Living With the Law (New Republic, pp. xx, 266), by June Purcell Guild, explains in non-technical and readable style the legal rules with which the average citizen most commonly comes into contact. The author writes that as a social worker she "has never been able to conquer a feeling of astonishment, in discovering and rediscovering

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how little everyone knows about the laws which affect every-day life." The topics treated are the judicial system, the several fields of law, absolute rights, marriage, divorce, husbands and wives, the child and his parent, legal attitude toward children, the illegitimate child, legal questions affecting the mentally abnormal, social responsibility for the poor, workers and the law, immigration and naturalization laws, criminal law, and the trial of the accused.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE
IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY PITMAN B. POTTER
University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

Norman Woods Beck; A.B., Chicago, 1923. A Group of Political Scientists as Inventors. *Chicago.*

Philip W. Buck; A.B., Idaho, 1923. The Relations Between Political and Economic Thought. *California.*

Jesse Thomas Carpenter; A.B., Duke, 1920; A.M., Iowa, 1925. Sectional Minorities and the Federal Constitution in the Ante-bellum South; A Study in Southern Political Thought. *Harvard.*

Edward F. Dow; S.B., Bowdoin, 1925; A.M., Harvard, 1926. The Present Value of the City State Ideal. *Harvard.*

Grace Givin; A.B., Kansas, 1914; S.D., *ibid.*, 1916. Louise DeKoven Bowen as a Political Leader. *Chicago.*

Mary Z. Johnson; PhB., Chicago, 1924. Development of Democratic Theory since 1848. *Chicago.*

Marion W. Lewis; A.B., Rockford, 1928. Jane Addams; A Study in Leadership. *Chicago.*

Chi Tai Li; A.B., Ohio Wesleyan, 1925; A.M., Ohio State, 1926. Political Philosophy of Sun Yat-sen. *New York University.*

**Ti Tsun Li;* A.B., Wisconsin, 1925; A.M., *ibid.*, 1926. The Political Theories of Sun Yat-sen. *Wisconsin.*

Floyd L. Mulkey; A.B., Baker, 1925. Recent Theories of Representative Government. *Chicago.*

Frances Newborg; A.B., Wellesley, 1927. Political Ideas in American Fiction. *Chicago.*

Katherine Andrus Newkirk; A.B., Pomona, 1923; A.M., Stanford, 1928. Alexander Hamilton's Concept of the State. *Stanford.*

Robert Phillips; A.B., Albion, 1916; A.M., Michigan, 1917. The Place of the Party in American Political Theory. *Michigan.*

Irma H. Reed; A.B., Radcliffe, 1924. The Political Theory of the Enlightened Despots. *Radcliffe.*

Pearl Robertson; Ph.B., Chicago, 1923; A.M., *ibid.*, 1925. Grover Cleveland as a Political Leader. *Chicago.*

[1] Similar lists have been printed in the *Review* as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928).

Asterisks indicate dissertations completed during the current year.

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* *K. S. Shelvankar;* A.B., National University, Madras, 1924; A.M., Wisconsin, 1927. An Historical and Analytical Study of the Idea of Equality. *Wisconsin.*

Robert C. Stevenson; A.B., Occidental, 1925; A.M., Columbia, 1926. Theories of War and Peace. *California.*

Ruth E. Wright; A.B., Middlebury, 1923; A.M., Vermont, 1929. The Nationalism of Alexander Hamilton and of Theodore Roosevelt; a Comparative Study. *Columbia.*

UNITED STATES GOVERNMENT AND POLITICS AND CONSTITUTIONAL LAW.

Norman Alexander; A.B., North Dakota, 1919; A.M., *ibid.*, 1920. Rights of Aliens under the Federal Constitution. *Columbia.*

Eleanor Bontecou; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

M. E. Brake; Ph.B., Chicago, 1920; J.D., *ibid.*, 1920. Criminal Law Enforcement by Injunction under Federal Legislation. *Chicago.*

Paul Herman Buck; A.B., Ohio State, 1921; A.M., *ibid.*, 1922. Party Divisions in the Van Buren and Tyler Administrations. *Harvard.*

Lula Cain; A.B., Illinois, 1922; A.M., Chicago, 1924. Minor Wars and Interventions of the United States. *Chicago.*

Keith Clark; Ph.B., Hamline, 1898; A.M., Minnesota, 1922. The United States and International Unions. *Columbia.*

Royden Dangerfield; S.B., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago.*

Hugh L. Elsbree; A.B., Harvard, 1925. The Regulation of Interstate Commerce in the Electric Power Industry. *Harvard.*

Brooks Emeny; A.B., Princeton, 1924. The Monroe Doctrine since the Great War. *Yale.*

H. Schuyler Foster; S.B., Dartmouth, 1925. American Attitude toward the European War, 1914–1917. *Chicago.*

Felipe Gamboa; A.B., Oregon, 1926; A.M., *ibid.*, 1927. The Political Policy of the United States in the Philippines. *California.*

Max Geller; A.B., College of City of New York, 1919; LL.B., New York Univ., 1920; A.M., *ibid.*, 1927. The Legal Effect of Unconstitutional Statutes. *New York University.*

Merrill J. Hewitt; A.B., Cornell College, 1927. American Military Interventions in China. *Northwestern.*

Laurence V. Howard; A.B., Southern College, 1920. The Method of Settling International Controversies by the United States. *Chicago.*

Peyton Hurt; A.B., Idaho, 1926; A.M., California, 1929. The Know-Nothing Party. *California.*

Arthur James; A.B., Lebanon, 1911; A.M., Cincinnati, 1913; B.D., Yale, 1915. American Rule in Porto Rico. *Columbia.*

Joseph T. Law; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations on the Delegation of Legislative Power. *Wisconsin.*

Albert Lepawsky; Ph.B., Chicago, 1927. Choice and Tenure of Judges in the United States. *Chicago.*

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Raymond Leydig; A.B., Kansas, 1925; A.M., Columbia, 1928. The American Farm Bureau Federation—a Pressure Group. *Columbia.*

Nelson Bernard Lisansky; A.B., Johns Hopkins, 1927. The Development of Law of Searches and Seizures. *Johns Hopkins.*

Stuart Alexander MacCorkle; A.B., Washington and Lee, 1925; A.M., Virginia, 1928. Our Recognition Policy toward Mexico. *Johns Hopkins.*

Evalyn Armistead Maurer; A.B., Northwestern, 1927; A.M., *ibid.*, 1928. Governmental Regulation of the Interstate Distribution of Public Utility Products. *Northwestern*

James D. McGill; A.B., Oberlin, 1920; A.M., *ibid.*, 1922. Religious Liberty and Equality in American Constitutional Law. *Cornell.*

James R. Pennock; A.B., Swarthmore, 1927; A.M., Harvard, 1928. Regionalism in American National Government. *Harvard.*

Ernest R. Perkins; A.B., Wesleyan, 1917; A.M., Clark, 1921. The Development of the Colonial Policies of the United States. *Clark.*

S. Lyle Post; A.B., University of California at Los Angeles, 1925. Methods of Coördination in American National Administration. *California.*

Rex M. Potterf; A.B., Indiana, 1918; A.M., Columbia, 1923, and Indiana, 1926. The Treaty of Versailles before the United States Senate. *Wisconsin.*

Charles Percy Powell; A.B., North Carolina, 1923; A.M., *ibid.*, 1925. Treatment of Alien Enemy Property in the Hands of the Custodian during the World War. *Johns Hopkins.*

Allen Thomas Price; Ph.B., Denison, 1916; A.M., Chicago, 1922. The Influence of the American Missionary Movement on American Diplomacy in China. *Harvard.*

Helen R. Rosenberg; A.B., California, 1923; A.M., *ibid.*, 1924. The Vice-President of the United States. *California.*

Leon Sachs. The Writ of Certiorari in Administrative Law. *Johns Hopkins.*

Max A. Shepard; A.B., Ohio State, 1927; A.M., Harvard, 1928. The Development of the Idea of the Fundamental Law of the Constitution. *Harvard.*

George A. Shipman; A.B., Wesleyan, 1925; A.M., *ibid.*, 1926. The Constitutional Doctrines of Justice Stephen J. Field. *Cornell.*

Charles W. Shull; A.B., Ohio Wesleyan, 1926; A.M., Ohio State, 1927. Contempt of the United States Senate and House of Representatives: Judicial and Investigative Powers of the Houses of Congress. *Ohio State.*

Norman James Small; A.B., Johns Hopkins, 1927. Some Presidential Interpretations of the Presidency. *Johns Hopkins.*

Ivan M. Stone; A.B., Nebraska, 1923; A.M., Illinois, 1926. The Relations of Petroleum to American Foreign Policy. *Illinois.*

I. H. Su; A.B., Wisconsin, 1926; A.M., Columbia, 1927. The Make-up of American Cabinets. *Columbia.*

Tienkai Lincoln Tan; A.B., Peking Teachers' College, 1922, A.M., Stanford, 1924. The Foreign Policy of Woodrow Wilson. *Stanford.*

Harold Teacher; A.B., Illinois, 1925; A.M., *ibid.*, 1926. Industrialization and the Consular Service. *Illinois.*

* *Eleanor Tupper;* A.B., Brown, 1926; A.M., Clark, 1927. American Sentiment toward Japan, 1904–1924. *Clark.*

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Paak S. Wu; A.B., Linghao University, Canton, 1926. The Federal Inspectorate. *Chicago.*

STATE AND LOCAL GOVERNMENT IN THE UNITED STATES.

John R. Abesold; A.B., Pennsylvania, 1922; LL.B., *ibid.*, 1925; A.M., *ibid.*, 1929. Commercial Arbitration in Pennsylvania. *Pennsylvania.*

William L. Bradshaw; S.B., Missouri, 1917; A.M., *ibid.*, 1924. The Missouri County Court: A Study of the Organization and Functions of the County Board of Supervisors in Missouri. *Iowa.*

Helen Breese; A.B., Bucknell, 1927; A.M., *ibid.*, 1928. Public Service Commissions; the Attachment of Jurisdiction. *Syracuse.*

Roy Edward Brown; S.B., Iowa State Teachers' College, 1923; A.M., Iowa, 1928. Organization and Administration of Fire Departments in Iowa. *Iowa.*

* *Daniel B. Carroll;* A.B., Illinois, 1915. The Unicameral Legislature of Vermont. *Wisconsin.*

Keith Carter; A.B., Randolph-Macon, 1907; A.M., Columbia, 1925. The Development of Criminal Law by Judicial Decision in Texas, 1890–1928. *Columbia.*

Lowry A. Doran; A.B., Chicago, 1910; A.M., *ibid.*, 1917. The Party System in Maine. *Chicago.*

William H. Edwards; A.B., Ohio State, 1923; A.M., *ibid.*, 1923. The Position of the Governor in Recent Administrative Reorganization in the States. *Ohio State.*

John North Edy; S.B., Missouri, 1905; A.M., California, 1926. Manual of Municipal Management. *Stanford.*

Rowland A. Egger; A.B., Southwestern, 1926; A.M., S.M.U., 1927. The Federated Region as a Solution of the Metropolitan Problem. *Michigan.*

Roy Ellis; A.B., Missouri, 1914; S.B., *ibid.*, 1914; A.M. Harvard, 1917. Civic History of Kansas City, Missouri. *Columbia.*

Lavinia Engle; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins.*

James W. Errant; S.B., Illinois, 1923. Public Employee Organizations in Chicago. *Chicago.*

Russell Ewing; A.B., Minnesota, 1923; A.M., Columbia, 1924. The Problem of Personnel under City Management. *Columbia.*

Sonya Forthal; A.B., Wisconsin, 1922; A.M., *ibid.*, 1923. An Analysis of the Functions of Precinct Committeemen. *Chicago.*

Plato Lee Gettys; A.B., Oklahoma, 1919; A.M., *ibid.*, 1927. Torts and Liabilities of Cities. *Stanford.*

George A. Graham; A.B., Monmouth, 1926; A.M., Illinois, 1927. Special Assessments in Detroit. *Illinois.*

Carl Green; A.B., Eastern Illinois State Teachers' College, 1924; A.M., Illinois, 1925. School Legislation in Illinois and its Interpretation by the Courts. *Illinois.*

Victor Hunt Harding; LL.B., Syracuse, 1907; A.B., Stanford, 1925. Non-Voting in California. *Stanford.*

Randolph O. Huus; A.B., St. Olaf's, 1916; A.M., Columbia, 1924. Municipal Play-grounds. *Syracuse.*

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W. Rolland Maddox; A.B., Ohio Wesleyan, 1923; A.M., Cincinnati, 1924. Municipal Home Rule in Ohio; an Evaluation. *Michigan.*

John W. Manning; A.B., Georgetown College, 1921; A.M., Missouri, 1926. City Planning, Zoning, and Beautifying in Iowa. *Iowa.*

Roscoe C. Martin; A.B., Texas, 1924; A.M., *ibid.*, 1925. The Populist Movement in Texas. *Chicago.*

Charles E. Martz; A.B., Yale, 1915; A.M., *ibid.*, 1917. Ohio Politics from 1876 to 1900. *Harvard.*

David M. Maynard; S.B., Princeton, 1922; A.M., Columbia, 1925. Operation of the Referendum in Chicago. *Chicago.*

George M. McCaffrey; A.B., Harvard, 1912; A.M., *ibid.*, 1913. The Government of Metropolitan Boston. *Harvard.*

Joseph McGoldrick; A.B., Columbia, 1923; A.M., *ibid.*, 1923. Municipal Home Rule, 1916–1928. *Columbia.*

C. McKensie; A.B., Dartmouth, 1920; A.M., Columbia, 1921. The New Hampshire Town. *Columbia.*

Blake W. Nicholson; LL.B., George Washington, 1923; LL.M., *ibid.*, 1925. S.B., Pennsylvania, 1926. The Coroner of Pennsylvania Compared with the Medical Examiner of Other States. *Pennsylvania.*

Spencer D. Parratt; A.B., Utah, 1924. Organization of Governments in the Regional Area of Chicago. *Chicago.*

Joseph Pois; A.B., Wisconsin, 1926; A.M., Chicago, 1927. The Recruitment of Police. *Chicago.*

Charles James Rohr; The Executive and the Administration of the Maryland State Government. *Johns Hopkins.*

Burton F. Scott; A.B., Washington, 1919. History of Police in Chicago. *Chicago.*

C. R. Sherrill; A.B., Wake Forest, 1921; A.M., Columbia, 1925. The Results of Criminal Appeals in North Carolina. *Columbia.*

Carlton C. Sims; S.B., Peabody, 1917; A.M., *ibid.*, 1922. The Tennessee County *Chicago.*

Robert F. Steadman; S.B., Dakota Wesleyan, 1923. Organization and Functioning of Public Health Agencies in the Regional Area of Chicago. *Chicago.*

Royal S. Steiner; A.B., Beloit, 1915; A.M., Harvard, 1921. State Control of Local Finance in Massachusetts and Ohio. *Harvard.*

John Frederick Thompson; A.B., Pomona, 1927. Political Activities of Organized Groups in Massachusetts. *Harvard.*

John P. Wright; S.B., Alabama Polytechnic Institute, 1922. The Workings of the Quadrennial Legislative System in the State of Alabama. *Harvard.*

FOREIGN AND COMPARATIVE GOVERNMENT.

E. C. Bellquist; A.B., California, 1927; A.M., *ibid.*, 1928. Actual and Theoretical Power of the Crown in Sweden. *California.*

Chun-Ming Chang; A.B., Illinois, 1926; A.M., *ibid.*, 1927. The Kuomintang and Chinese Nationalism. *Yale.*

Duckso Chang; A.B., Waseda, Japan, 1916; A.M., Columbia, 1925. Methods of Promoting Industrial Peace in Great Britain. *Columbia.*

* *Hartley W. Cross;* A.B., Springfield, 1923; A.M., Clark, 1924. The Status of the British Dominions. *Clark.*

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E. DeHass; A.B., Hunter, 1923; A.M., Columbia, 1925. The Bail System in England. *Columbia.*

A. G. Dewey; A.B., McGill, 1911; A.M., *ibid.*, 1913. The Dominions and Diplomacy; the Canadian Contribution. *Columbia.*

A.E. Elliott; A.B., Drake, 1915; A.M., College of Missions. Latin American Attitude toward the Pan-American Union. *Columbia.*

Margaret Bonine Fox; A.B., Michigan, 1925. The Development and Use of Questions in the House of Commons. *Michigan.*

Sooren Frankian; A.B., California, 1924; A.M., *ibid.*, 1926. British Foreign Policies and the League of Nations. *California.*

Frederic W. Ganzert; A.B., California, 1926; A.M., *ibid.*, 1927. Brazil and the Pacific Settlement of International Disputes. *California.*

Paul Heaton; A.B., Minnesota, 1924; A.M., *ibid.*, 1925. Extraterritoriality in China. *Chicago.*

Sylvester Hemleben; A.B., Iowa, 1927; A.M., *ibid.*, 1928. The British Dominions in the League of Nations. *Columbia.*

Pendleton Howard. A.B., Columbia, 1921; A.M., *ibid.*, 1924. Public Prosecution in England. *Columbia.*

William Crane Johnstone, Jr.; A.B., Denver, 1924; A.M., *ibid.*, 1927. Administration of the International Settlement of Shanghai, China. *Stanford.*

Margaret A. Judson; A.B., Mount Holyoke, 1922; A.M., Radcliffe, 1923. The Growth of the Theory of Parliamentary Sovereignty in England between 1640 and 1660. *Radcliffe.*

Grayson L. Kirk; A.B., Miami, 1924; A.M., Clark, 1925. An Analysis of French Policy in Alsace-Lorraine since 1919. *Wisconsin.*

K. P. Kirkwood; A.B., Toronto, 1922; A.M., Columbia, 1927. The Solution of the Minority Problem in Turkey. *Columbia.*

Chuang Liu; Ph.B., Chicago, 1920. The Chinese Civil Service. *Chicago.*

W. H. Ma; A.B., Nanking, 1924. Palmerston's Far Eastern Policy. *Columbia.*

Mary Mangigian; A.B., Pennsylvania, 1927; A.M., *ibid.*, 1929. The Rise of the Armenian Republic. *Pennsylvania.*

Ethel Marie Manning; A.B., California, 1920; A.M., Southern California, 1926. Britannic Citizenship. *Stanford.*

M. Matsuchita; A.B., Carleton, 1925. Japan's Rôle in the League of Nations. *Columbia.*

* *Sotaro Matsuchita;* A.B., California, 1917; A.M., *ibid.*, 1919. Labor Parties of Western Europe. *Harvard.*

S. McCordock; A.B., Syracuse, 1918; A.M., Buffalo, 1926. British Policy in the Far East. *Columbia.*

Hucheshawr G. Mudgal; A.M., Columbia, 1928. Political Parties in India; a Study in Contrasts. *Columbia.*

Marjorie Owen; A.B., Oxford, 1926; B.C.L., *ibid.*, 1927. Prize Law Procedure. *Columbia.*

Gerda C. Richards; A.B., Smith, 1922; A.M., Radcliffe, 1923. The Transformation of the Tory Party after 1780. *Radcliffe.*

R. W. Rogers; A.B., Pacific, 1922; A.M., Columbia, 1926. Mediterranean Policy of Italy, 1920–1927. *Columbia.*

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A. Solansky; Charles University, Prague, 1912; A.M., Columbia, 1924. German Administration in Belgium. *Columbia.*

Joseph R. Starr; A.B., Nebraska, 1925; A.M., Minnesota, 1927. The Development of Forms of Communication between the Two Houses of the English Parliament. *Minnesota.*

Harold W. Stoke; A.B., Marion; A.M., Southern California. The Foreign Relations of Federal States. *Johns Hopkins.*

Masao Matsumoto Suma; A.B., Stanford, 1927; A.M., *ibid.*, 1928. Administration of Governmental Finances in Japan. *Stanford.*

Sterling H. Takeuchi; A.B., Texas, 1925; A.M., *ibid.*, 1926. Control of Foreign Relations in Japan. *Chicago.*

Edgar C. Tang; A.B., Boone (China), 1922; J.B., Missouri, 1926; A.M., *ibid.*, 1927. The Theory and Practice of the Yu-Sze System in China. *Harvard.*

Edgar C. Tong; A.B., Boone (China), 1922; A.M., Missouri, 1927. Constitutional Development of China. *Columbia.*

Felix Vondracek; A.B., Iowa, 1923; A.M., *ibid.*, 1924. The Foreign Policy of Czechoslovakia. *Columbia.*

Shih Fu Wang; A.B., Wisconsin, 1926; A.M., *ibid.*, 1926. Turkey in World Politics, 1914–1924. *Wisconsin.*

H. C. Wu; Ph.B., Wisconsin, 1926; A.M., Columbia, 1927. Whips in the British House of Commons. *Columbia.*

C. Walter Young; A.B., Northwestern, 1922; A.M., Minnesota, 1924. Japanese Policy and Administration in Manchuria. *Minnesota.*

INTERNATIONAL ORGANIZATION AND POLITICS AND INTERNATIONAL LAW

L. M. Bishop; A.B., Dartmouth, 1906; A.M., Columbia, 1917. Arbitral Procedure. *Columbia.*

D. C. Blaisdell; S.B., Penn State, 1920; A.M., Columbia, 1926. European Financial Control in the Ottoman Empire. *Columbia.*

Dennis William Brogan; A.M., Glasgow, 1922. International Aspects of Irish Nationalism. *Harvard.*

Claude A. Buss; A.B., Grove City, 1924. Tariff Autonomy in China. *Pennsylvania.*

* *Howard B. Calderwood, Jr.;* A.B., Ohio Wesleyan, 1921. International Protection of Minorities in National States. *Wisconsin.*

Chung-Fu Chang; A.B., Michigan, 1925; A.M., Harvard, 1927. The Anglo-Japanese Alliance. *Johns Hopkins.*

Lois A. Childs; A.B., Wellesley, 1922; A.M., Columbia, 1925. The Cape-to-Cairo Railway. *Columbia.*

P. C. Chu; Nan Woo College, China, 1915. Title to Territory under International Law. *Chicago.*

Guy Shirk Claire; A.B., Southern California, 1923; A.M., Pennsylvania, 1928; LL.B., *ibid.*, 1926. Rights and Duties of States under International Law (South America). *Stanford.*

Helen May Corey; A.B., Northwestern, 1925; A.M., *ibid.*, 1927. A Study of the Kinds of Disputes which States Are Willing to Submit to Arbitration. *Columbia.*

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Feng Djen Djang; A.B., Shanghai, 1927. The Diplomatic Relations between China and Germany since 1898. *Johns Hopkins.*

Annie Mae Engel; A.M., Texas, 1927; A.M., *ibid.*, 1928. Rubber as a Factor in International Relations. *Columbia.*

James W. Gantenbein; A.B., Reed, 1922; LL.B., N.W. College of Law, 1922; A.M., Columbia, 1925. The Doctrine of Continuous Voyage. *Columbia.*

Alexander Ginsberg; A.B., Cornell, 1926. The Effect of Treaties upon States not Parties Thereto. *Columbia.*

C. W. Hallberg; S.B., Trinity, 1923; A.M., Columbia, 1924. The Suez Canal. *Columbia.*

John G. Herndon; A.B., Washington and Lee, 1910; A.M., *ibid.*, 1912. International Reciprocity in Income Taxation. *Pennsylvania.*

Albert E. Hindmarsh; A.B., Washington, 1926; A.M., Harvard, 1927. Reprisals in International Law. *Harvard.*

Hoen Zoe Hu; A.B., Fuh-Tan, 1925; LL.B., Comparative Law School (China), 1926; A.M., Columbia, 1927. Measures of Damages in International Claims. *Columbia.*

Po-Wen Huang; A.B., Harvard, 1926; A.M., Columbia, 1923. Foreign Tariff Control of Debtor Countries. *Columbia.*

Irby Hudson; A.B., Vanderbilt, 1906; A.M., *ibid.*, 1911. Free Tolls at Panama. *Columbia.*

Warren H. Kelchner; S.B., Pennsylvania, 1924. The Relations of Latin America to the League of Nations. *Pennsylvania.*

J. A. Levandis; S.B., Delaware, 1921; A.M., Columbia, 1922. International Financial Control of Greece. *Columbia.*

Rob Roy MacGregor; A.B., S.M.U., 1924; A.M., Clark, 1926. The Treaty of 1846: Seventeen Years of American-Columbian Relations (1830–1846). *Clark.*

**John B. Mason;* A.B., Butler, 1926; A.M., Wisconsin, 1927. The Legal Status of the Free City of Danzig. *Wisconsin.*

W. Mauck; A.B., Hillsdale, 1921; A.M., Columbia, 1927. The International Régime of the Saar Basin. *Columbia.*

G. A. McCleary; A.B., Ohio Wesleyan, 1917; J.D., Michigan, 1924. The Distinction between Political and Legal Questions under International Law. *Chicago.*

Mildred Moulton; A.B., California, 1921; A.M., *ibid.*, 1923. A Structural View of the Conference as an Organ of International Government. *New York University.*

G. Noble; A.B., Oxford, 1915; A.M., *ibid.*, 1923. The Open Door Policy in China. *Columbia.*

Norman Judson Padelford; Ph.B., Denison, 1925. The Legal Status of Alien Religious Property Situated in China. *Harvard.*

Ralph E. Page; A.B., Bluffton, 1926; A.M., Syracuse, 1928. Reciprocity Laws and Agreements. *Syracuse.*

Yoo-Hsiang Peng; S.B., Miami, 1921; A.M., Columbia, 1922. Relations between China and France. *Columbia.*

Helen Louise Reid; A.B., Vassar, 1922; A.M., Radcliffe, 1924. Servitudes in International Law; Theory and Practice. *Radcliffe.*

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